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SUBCHAPTER A—GENERAL

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40534, Aug. 5, 1996, unless otherwise noted.

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulations (FAR) Supplement, also referred to as the NFS.

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority. (NASA supplements paragraph (a))

(a) Under the following authorities, the Administrator has delegated to the Associate Administrator for Procurement authority to prepare, issue, and maintain the NFS:

(i) The National Aeronautics and Space Act of 1958 (Public Law 85–568; 42 U.S.C. 2451 et seq.).

(ii) 10 U.S.C. chapter 137.

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

1801.104 Applicability.

The NFS applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this chapter.

1801.105 Issuance.

1801.105–1 Publication and code arrangement. (NASA supplements paragraphs (a) and (b))

(a) The single official NASA-maintained version of the NFS is on the Internet (http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm).

(b) The NFS is issued as chapter 18 of title 48, Code of Federal Regulations (CFR).

[61 FR 40534, Aug. 5, 1996, as amended at 64 FR 36606, July 7, 1999]

1801.105–2 Arrangement of regulations. (NASA supplements paragraph (b))

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105–2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105–2(b)(1) are numbered 1801.105–2(b)(1) (A) and (B),

rather than (1) (i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105–3 is numbered 1801.105–370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105–2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))

(1) NFS requirements. The following OMB control numbers apply:

NFS Segment	OMB Control No.
1804.470	2700–0098
1804.74	2700–0097
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1831	2700–0080
1843	2700–0054
1843.71	2700–0094
NF 533	2700–0003
NF 1018	2700–0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700–0086 (acquisitions up to $25,000), 2700–0087 (solicitations that may result in bids or proposals not exceeding $500,000), 2700–0085 (solicitations that may result in bids or proposals exceeding $500,000), 2700–0088 (contracts not exceeding $500,000), and 2700–0089 (contracts exceeding $500,000).

[61 FR 40534, Aug. 5, 1996, as amended at 63 FR 9953, Feb. 27, 1998; 65 FR 46627, July 31, 2000]

Subpart 1801.2—Aministration

1801.270 Amendment of the NFS.

(a) The NFS is amended by publishing changes in the FEDERAL REGISTER. These changes are then incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

(b) Compliance with a revision to the NFS shall be in accordance with the PN containing the revision. Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

[64 FR 36606, July 7, 1999]

1801.271 NASA procedures for FAR and NFS changes.

(a) Informal suggestions for improving the NFS, including correction of errors, should be directed to the Headquarters Office of Procurement (Code HK).

(b) (1) Formal requests for changes to the FAR or the NFS should be written and contain

(i) A description of the problem the suggested revision is designed to cure,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to Code HK. Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. Code HK is responsible for issuing PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy. (NASA supplements paragraphs (a) and (b))

(a)(2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement (Code HK) for approval in accordance with 1801.271(b).

(b)(i) 41 U.S.C. 418b requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors. However, it does not define ''significant effect beyond the internal operating procedures'' or ''significant cost or administrative impact.'' Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is a part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.303 Publication and codification. (NASA supplements paragraph (a))

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

Subpart 1801.4—Deviations From the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the Procurement Officer to the Headquarters Office of Procurement (Code HS).

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or the NFS requirement from which a deviation is sought;

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously

and, if so, the circumstances of the previous request;

(5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);

(6) Detailed reasons supporting the request, including any pertinent background information; and

(7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities

1801.601 General.

The authority to contract for authorized supplies and services is delegated to the Associate Administrator for Procurement and installation officials by NPD 5101.32.

1801.602–3 Ratification of unauthorized commitments. (NASA supplements paragraphs (b) and (c))

(b) Policy. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c)(7) The authority in FAR 1.602–3 may be exercised only when—

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request, the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

1801.603 Selection, appointment, and termination of appointment.

1801.603–2 Selection.

Normally, only GS–1102 and –1105 personnel with the proper training and experience may be appointed contracting officers and only when a valid organizational need can be demonstrated.

1801.670 Delegations to contracting officer's technical representatives (COTRs).

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant.

Subpart 1801.7—Determinations and Findings

1801.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Associate Administrator for Procurement or by a contracting officer.

1801.770 Legal review.

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

1802.000 Scope of part.

Commonly used words and terms are defined in FAR subpart 2.1. This part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.101 Definitions.

Administrator means the Administrator or Deputy Administrator of NASA.

Contracting activity in NASA includes the NASA Headquarters installation and the following field installations: Ames Research Center, Dryden Flight Research Center, Glenn Research Center at Lewis Field, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Marshall Space Flight Center, Space Station Program Office and Stennis Space Center.

Head of the agency or *agency head* means the Administrator or Deputy Administrator of NASA.

Head of the contracting activity means, for field installations, the Director or other head and, for NASA Headquarters, the Associate Administrator for Headquarters Operations.

NASA Acquisition Internet Service (NAIS) means the Internet service (URL: hhtp://procurement.nasa.gov) NASA uses to broadcast its business opportunities, procurement regulations, and associated information.

Procurement officer means the chief of the contracting office, as defined in FAR 2.101.

Senior Procurement Executive means the Associate Administrator or Deputy Associate Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

[61 FR 40537, Aug. 5, 1996, as amended at 63 FR 9953, Feb. 27, 1998; 64 FR 19926, Apr. 23, 1999]

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

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1803.101 Standards of conduct.
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1803.602 Exceptions.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.
1803.705 Procedures.

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.
1803.806 Processing suspected violations.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101–1 General.

The statutory prohibitions and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, 5 CFR part 6901. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

[61 FR 40537, Aug. 5, 1996, as amended at 62 FR 14016, Mar. 25, 1997]

1803.101–2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General.

[61 FR 40537, Aug. 5, 1996, as amended at 62 FR 14016, Mar. 25, 1997]

1803.104 Procurement integrity.

[62 FR 36704, July 9, 1997]

1803.104–3 Definitions.

Agency ethics official means for Headquarters, the General Counsel and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

[62 FR 36704, July 9, 1997]

1803.104–5 Disclosure, protection, and marking of proprietary and source selection information. (NASA supplements paragraphs (a) and (c))

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(i) Personnel participating in source evaluation board (SEB) procedures (see 1815.370) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures and personnel evaluating protests.

(ii) Personnel assigned to the contracting office.

(iii) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(iv) Small business specialists.

(v) Personnel assigned to counsel's office.

(vi) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(vii) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in Subpart 1807.71.

(viii) Other Government employees authorized by the contracting officer.

(ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104–5(a) (i) through (viii).

(x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in FAR 3.104–3 shall assure that the material is marked with the legend in FAR 3.104–5(c) at the time the material is prepared.

(ii) Unless marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104,'' draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in

order to determine the capabilities of potential competitive sources (see FAR Subpart 7.1). All documents, once released, must remain available to the public until the conclusion of the acquisition.

[62 FR 36704, July 9, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1803.104–10 Violations or possible violations. (NASA supplements paragraphs (a), (b) and (f))

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Associate Administrator for Procurement (Code HS).

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Associate Administrator for Procurement (Code HS) simultaneous with transmittal to the Administrator.

[62 FR 36704, July 9, 1997]

Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203–3, Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations. (NASA supplements paragraphs (b) and (d))

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HS). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HS). The report shall include the reasons for suspecting collusion. Code HS shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with 1809.470.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Associate Administrator for Procurement has been delegated the authority to authorize an exception to

the policy in FAR 3.601. The Associate Administrator for Procurement has redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of $100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Associate Administrator for Procurement (Code HS) for approval.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy. (NASA supplements paragraph (a))

(a) The Associate Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201–224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

Procurement officers shall make reports to the Associate Administrator for Procurement (Code HS). The Associate Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705(c), (d), and (e).

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy

Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF–LLL) furnished pursuant to FAR 3.803 to the Office of Procurement (Code HS). The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

1803.806 Processing suspected violations.

The Associate Administrator for Procurement (Code HS) is the designated official to whom suspected violations of the Act shall be referred.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Executive

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1804.203 Taxpayer identification information.

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Subpart 1804.6—Contract Reporting

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1804.670–3 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).
1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.

Subpart 1804.8—Government Contract Files

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Subpart 1804.9—Taxpayer Identification Number Information

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40539, Aug. 5, 1996, unless otherwise noted.

Subpart 1804.1—Contract Execution

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204–1, Approval of Contract, in solicitations, contracts, and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert ''NASA Associate Administrator for Procurement'' in the clause's blank space.

1804.170 Contract effective date.

(a) *Contract effective date* means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205–32) and the clause prescribed at 1831.205–70 is used.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for Aero-Space Information (CASI), Attention: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076–1320.

[64 FR 36606, July 7, 1999]

1804.203 Taxpayer identification information.

Instead of using the last page of the contract to provide the information listed in FAR 4.203, NASA installations may allow contracting officers to use a different distribution method, such as annotating the cover page of the payment office copy of the contract.

[64 FR 1528, Jan. 11, 1999]

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General. (NASA supplements paragraph (b))

(b) NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. (See also 1842.202–72).

1804.404–70 Contract clause.

The contracting officer shall insert the clause at 1852.204–75, Security Classification Requirements, in solicitations and contracts if work is to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

1804.470 Security requirements for unclassified information technology resources.

1804.470–1 Scope.

This section implements the acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

1804.470–2 Policy.

(a) NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology. Security requirements for safeguarding sensitive information contained in unclassified Federal computer systems are required in the following:

(1) All contracts for information technology resources or services. This includes, but is not limited to information technology hardware, software, and the management, operation, maintenance, programming, and system administration of information technology resources, to include computer systems, networks, and telecommunications systems.

(2) Contracts under which contractor personnel must have physical or electronic access to NASA's sensitive information contained in unclassified systems or information technology services that directly support the mission of the agency.

(b) The contractor must not use or redistribute any NASA information processed, stored, or transmitted by the contractor except as specified in the contract.

[65 FR 43718, July 14, 2000]

1804.470–3 Security Plan for Unclassified Federal Information Technology Systems.

(a) The contracting officer, with the concurrence of the requiring activity, the center Chief Information Officer (CIO), and the center Information Technology (IT) Security Manager, may require the contractor to submit for post-award Government approval, a detailed Security Plan for Unclassified Federal Information Technology Systems. The plan must be required as a contract data deliverable that must be subsequently incorporated into the contract as a compliance document after Government approval. The plan must demonstrate a thorough understanding of NPG 2810.1 and NPD 2810.1 and must include, as a minimum, the security measures and program safeguards planned to ensure that the information technology resources acquired and used by contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

(5) Document and follow a virus protection program for all IT resources under its control; and

(6) Document and follow a network intrusion detection and prevention program for all IT resources under its control.

(b) The contractor must be required to develop and maintain IT System Security Plans, in accordance with NPG 2810.1, for systems for which the contractor has primary operational responsibility on behalf of NASA.

[65 FR 43718, July 14, 2000]

1804.470–4 Contract clauses.

The contracting officer must insert the clause at 1852.204–76, Security Requirements for Unclassified Information TechnologyResources, in solicitations and contracts involving unclassified information technology resources.

[65 FR 43718, July 14, 2000]

Subpart 1804.5—Electronic Commerce in Contracting

SOURCE: 63 FR 9954, Feb. 27, 1998, unless otherwise noted.

1804.570 NASA Acquisition Internet Service (NAIS).

1804.570–1 General.

The NASA Acquisition Internet Service (NAIS) provides an electronic means for posting procurement synopses, solicitations, procurement regulations, and associated information on the Internet.

1804.570–2 Electronic posting system.

(a) The NAIS Electronic Posting System (EPS) enables the NASA procurement staff to:

(1) Electronically create and post synopses on the Internet and in the Commerce Business Daily (CBD); and

(2) Post solicitation documents, including solicitation amendments or cancellations, and other procurement information on the Internet.

(b) The EPS maintains an on-line index linking the posted synopses and solicitations for viewing and downloading.

(c) The EPS shall be used to:

(1) Create and post all synopses in accordance with FAR part 5 and NFS 1805; and

(2) Post all competitive solicitation files, excluding large construction and other drawings, for acquisitions exceeding $25,000.

(d) The NAIS is the official site for solicitation postings. In the event supporting materials, such as program libraries, cannot be reasonably accommodated by the NAIS, Internet sites external to NAIS may be established after coordination with the Contracting Officer. Such sites must be linked from the NAIS business opportunities index where the solicitations reside. External sites should not duplicate any of the files residing on the NAIS.

[63 FR 9954, Feb. 27, 1998, as amended by 63 FR 44408, Aug. 19, 1998]

Subpart 1804.6—Contract Reporting

1804.601 Record requirements.

The Headquarters Office of Procurement (Code HS) is responsible for meeting the requirements of FAR 4.601, based on installation submission of Individual Procurement Action Reports (NASA Form 507 series) data.

[61 FR 40539, Aug. 5, 1996, as amended at 63 FR 32763, June 16, 1998]

1804.602 Federal Procurement Data System. (NASA supplements paragraph (d))

(d) Code HS is responsible for requesting, obtaining, and reporting Contractor Establishment Codes to the FPDS.

[61 FR 40539, Aug. 5, 1996, as amended at 63 FR 32763, June 16, 1998]

1804.670 Individual Procurement Action Report (NASA Form 507 series).

The Individual Procurement Action Report and Supplements (NASA Form 507 series) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to Congress, Federal Procurement Data Center, and other Federal agencies. The preparation and utilization of the NASA Form 507 series are integral parts of the agencywide Financial and Contractual Status (FACS) system.

§ 1804.670–1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and funded Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial value is more than $25,000.

(4) All purchase orders for advisory and assistance services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for FPDS reports.)

(b) *Modifications.* Modifications that

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported.

1804.670–2 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the fifth work day following each month being reported. The installation procurement officer should establish an agreement with the installation financial officer on a cut-off date for processing contractual documents to ensure that the FACS procurement submission and the FACS financial submission for the month include the same contracts.

1804.670–3 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

(a) The information required by the following forms shall be provided when submitting individual Procurement Action Reports:

(1) New contract awards—NASA Forms 507, 507A, and 507B.

(2) New grants, cooperative agreements, funded Space Act agreements, intragovernmental agreements, and orders against federal supply schedules—NASA Forms 507G and 507B.

(3) Modifications to any procurement action—NASA Forms 507M and, if necessary, 507B.

(b) The NASA Forms 507 series shall be prepared in accordance with instructions issued by Code HS. These instructions will be issued and updated through Procurement Information Circulars (PICs).

[61 FR 40539, Aug. 5, 1996, as amended at 63 FR 32763, June 16, 1998]

1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.

NASA Form 1356, C.A.S.E. Report on College and University Projects, shall be prepared for awards to nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. Information on this form is used to produce reports required by the National Science Foundation and to respond to inquiries. Submission is required regardless of instrument type (contract, grant, cooperative agreement, or funded Space Act agreement) and type of proposal (solicited or unsolicited). Instructions appear on the form itself and constitute the detailed guidance for preparation and submission. The form, which is either included with the acquisition package or initiated by the contracting office, shall be completed, reviewed, and promptly forwarded upon award to the Headquarters Office of Human Resources and Education (Code FE).

[61 FR 40539, Aug. 5, 1996, as amended at 63 FR 32763, June 16, 1998]

Subpart 1804.8—Government Contract Files

1804.802–70 Handling of classified material.

When a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

1804.803 Contents of contract files.

1804.803–70 Checklist.

NASA Form 1098, Checklist for Contract Award File Content, shall be used as the ''top page'' in contract files.

1804.804 Closeout of contract files.

1804.804–2 Closeout of the contracting office files if another office administers the contract. (NASA supplements paragraph (b))

(b) Upon receiving the NASA Form 1611 or DD Form 1594, Contract Completion Statement, from the contract administration office and complying with FAR 4.804–2(b), the contracting officer shall complete the form.

1804.804–5 Procedures for closing out contract files.

(a) When the contracting office retains contract administration (excluding acquisitions under the simplified acquisition threshold), the contracting officer must comply with FAR 4.804–5(a) by completing NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.

(b) To comply with FAR 4.804–5(b), the contracting officer must complete NASA Form 1611 or DD Form 1594, Contract Completion Statement, except for acquisitions under the simplified acquisition threshold.

[61 FR 40539, Aug. 5, 1996, as amended at 65 FR 31102, May 16, 2000]

1804.805 Storage, handling, and disposal of contract files. (NASA supplements paragraph (a))

(a) See NPG 1441.1C, Records Retention Schedules.

[61 FR 40539, Aug. 5, 1996, as amended at 64 FR 5620, Feb. 4, 1999]

1804.805–70 Review, separation, and retirement of contract files.

(a) Upon determination of contract completion under the procedures outlined in 1804.804, each office shall remove the official contract files from the active file series, mark each file folder with ''Completed (Date)'', and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of $25,000 or less and for contracts of more than $25,000, to facilitate later disposal. Any original or official file copies of documents contained in duplicate or ''working'' contract files shall be removed and placed in the appropriate official file; any remaining material in the duplicate or ''working'' file shall be destroyed immediately or segregated and marked for early disposal.

(b) Each office shall review contractor ''general'' files (i.e., a file containing documents relating generally to a contractor rather than a specific contract) at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor's current or future capability, performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NPG 1441.1C, Records Retention Schedules.

[61 FR 40539, Aug. 5, 1996, as amended at 64 FR 5620, Feb. 4, 1999]

Subpart 1804.9—Taxpayer Identification Number Information

1804.904 Reporting payment information to the IRS.

Each NASA installation, that has its own employer identification number, may elect to report to the IRS payments under purchase orders and contracts for merchandise and other exempt bills.

[64 FR 1528, Jan. 11, 1999]

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

Transfer of a contract, as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

1804.7002 Approval of transfer requests.

(a) The approval authority for requests to transfer a contract is the official in charge of the cognizant Headquarters program office or designee. Requests for approval shall be submitted by the director of the transferring installation after receiving the concurrence of the director of the receiving installation. Concurrence of the Associate Deputy Administrator (Code AI) is also required for a transfer where an installation's roles and missions may be affected.

(b) Approval of a program transfer by the cognizant Headquarters official constitutes approval to transfer program-related contracts.

1804.7003 Responsibilities of the contracting officer of the transferring installation.

1804.7003–1 Coordinations.

The contracting officer of the transferring installation shall take the following steps before transferring the contract:

(a) Agree on a plan and schedule with the contracting officer of the receiving installation for transferring contract responsibility and contract files.

(b) Coordinate with the following offices:

(1) Financial Management Office, to determine the contract financial records to be transferred and the method, timing, and dollar amount of such transfers.

(2) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(3) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(4) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(5) Transportation Office, to determine the status of bills of lading furnished the contractor.

(6) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(7) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

1804.7003–2 File inventory.

The contracting officer of the transferring installation shall prepare an inventory of the contract file. This inventory shall also include a separate listing of all outstanding requests for contract administration assistance issued to other Government agencies, indicating the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services yet to be performed for each requested function. Copies of this inventory shall be provided to the contracting officer of the receiving installation.

1804.7003–3 Notifications.

The contracting officer of the transferring installation shall provide written notification of the planned transfer to the contractor and all agencies performing or requested to perform administration services.

1804.7003–4 Transfer.

(a) Upon completion of the actions described in 1804.7003–1 through 1804.7003–3, the contracting officer of the transferring installation shall issue a letter to the contractor, agencies performing contract administration functions, contracting officer representatives, and the contracting officer of the receiving installation. This letter shall provide notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer of the receiving installation.

(b) After issuing the letters described in 1804.7003–4(a), the contracting officer of the transferring installation shall send the contract file to the contracting officer of the receiving installation with a letter transferring contract responsibility. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer of the receiving installation.

1804.7003–5 Retention documentation.

The contracting officer of the transferring installation shall retain for permanent file a copy of the approvals and concurrences required by 1804.7002, the transfer acceptance letter of the contracting officer of the receiving installation, and any additional documents necessary for a complete summary of the transfer action.

1804.7004 Responsibilities of the contracting officer of the receiving installation.

1804.7004–1 Pre-transfer file review.

The contracting officer of the receiving installation shall review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract. This review may be waived by written notification to the contracting officer of the transferring installation.

1804.7004–2 Post-transfer actions.

The contracting officer of the receiving installation shall—

(a) Provide the contracting officer of the transferring installation written acceptance of contract responsibility and receipt of the contract files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's technical representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to affected installation offices; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the procedures for uniform numbering of NASA solicitations, contracts (including letter contracts), purchase orders (including requests to other Government agencies), basic ordering agreements, other agreements between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements to these instruments.

1804.7101 Policy.

(a) Contractual documents shall be numbered with approved prefixes and serial numbers as prescribed in this subpart. If other identification is required for center purposes, it shall be placed on the document in such a location as to clearly separate it from the identification number.

(b) The identification number shall consist of not more than 11 alpha-numeric characters positioned as prescribed in this subpart and shall be retained unchanged for the life of the particular instrument.

1804.7102 Prefixes.

(a) Approved prefixes are as follows:

Installation	Contract prefix	Purchase order prefix
Ames Research Center	NAS 2	A
Dryden Flight Research Center	NAS 4	E
Glenn Research Center at Lewis Field.	NAS 3	C
Goddard Space Flight Center	NAS 5	S
Headquarters	NASW	W
Lyndon B. Johnson Space Center.	NAS 9	T
John F. Kennedy Space Center	NAS10	CC
Langley Research Center	NAS 1	L

Installation	Contract prefix	Purchase order prefix
George C. Marshall Space Flight Center.	NAS 8	H
NASA Management Office-JPL ..	NAS 7	WO
John C. Stennis Space Center ...	NAS13	NS
Space Station Program Office	NAS15	K

(b) The contract prefix shall be used for the following documents:

(1) Contracts, including letter contracts, indefinite-delivery contracts, utilities, leases of real property and renewals.

(2) Easements.

(3) Basic ordering agreements.

(4) Other written agreements involving payment or receipt of funds not covered by 1804.7102(e).

(c) Contracts totally funded under reimbursable arrangements with the department of Energy shall use a DEN prefix instead of the NAS prefix (e.g., DEN 8 for Marshall).

(d) Space Act agreements awarded under the authority of Section 203(c)(5) or 203(c)(6) of the Space Act shall use an NCA prefix instead of the NAS prefix (e.g., NCA 8 for Marshall).

(e) The purchase order prefix shall be used for purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services.

(f) Solicitations shall be numbered in accordance with installation procedures, except that in all cases the identifying number shall begin with the portion of the installation's contract prefix following ''NAS.''

(g) If a prefix is required for an installation or office not listed in this section, a request for a prefix assignment shall be submitted to the Headquarters Office of Procurement (Code HS).

[61 FR 40539, Aug. 5, 1996, as amended at 63 FR 32763, June 16, 1998; 64 FR 19926, Apr. 23, 1999]

1804.7103 Serial numbers.

(a) Installations shall number contracts and agreements identified in 1804.7102(b) serially by fiscal year. The serial number shall be five digits beginning with a two-digit fiscal year identifier followed by a three digits commencing with ''001'' and continuing in succession. For example, the first contracts awarded by Ames Research Center in fiscal year 1997 shall be numbered NAS 2 97001 and NAS 2 97002. Fiscal year identification is optional for Space Act agreements.

(b) Serial number for purchase orders shall be assigned serially without fiscal year identification. When the series of numbers exceeds five digits (over 99,999), a new series shall be used, beginning the series with number ''1'' and followed by the capital letter ''A.'' Should additional series become necessary, they will be distinguished by the capital letters ''B,'' ''C,'' and so forth, as may be required, except that the letters ''I'' and ''O'' shall not be used.

1804.7104 Modifications of contracts or agreements.

(a) Modifications of definitive or letter contracts or agreements shall (1) bear the same identification as the contract or agreement being modified and (2) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(b) Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (a) of this section.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Contact review by Headquarters.

(a) Requests for approval of contracts and supplemental agreements by the Associate Administrator for Procurement shall be submitted to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 15 days for review.

(b) Each request for approval shall be accompanied by (1) five copies of the contractual document, one of which

has been executed by the contractor and contracting officer, and (2) the official contract file containing the appropriate documentation as set forth in FAR 4.803(a). However, for the items specified in FAR 4.803(a) (10), (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, in lieu of the items specified in FAR 4.803(a)(26) (ii) and (iii), the contracting officer shall provide an index briefly describing the content of all previous modifications.

(c) The approval required under this section shall be made by signature of the Associate Administrator for Procurement on the contract/supplemental agreement.

Subpart 1804.73—Procurement Requests

1804.7301 General.

(a) Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request (PR), containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the PR certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) Program authority has been issued and funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) The procurement officer authorizes such action in writing before solicitation issuance; and

(4) The solicitation includes the clause at FAR 52.232–18, Availability of Funds. The clause shall be deleted from the resultant contract.

(b) The contracting office shall not issue either a draft or final solicitation until a PR, either planning or final, has been received that contains an NPG 7120.5 certification. That certification must be made by the project or program office that initiated the PR, or the PR approval authority when there is no project or program office. The certification must state that either—

(1) The requested action is not in support of programs and projects subject to the requirements of NPG 7120.5, or

(2) The requested action is in support of programs and projects subject to the requirements of NPG 7120.5, and

(i) All NPG 7120.5 required documentation is current and has been approved; or

(ii) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

[64 FR 14640, Mar. 26, 1999]

Subpart 1804.74—Central Contractor Registration

SOURCE: 65 FR 50153, Aug. 17, 2000, unless otherwise noted.

1804.7400 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database.

1804.7401 Definitions.

''Central Contractor Registration (CCR) database,'' ''Data Universal Numbering System (DUNS) number,'' ''Data Universal Numbering System+4 (DUNS+4) number,'' ''Commercial and Government Entity (CAGE) Code,'' and ''Registered in the CCR database'' are defined in the clause at 1852.204–74, Central Contractor Registration.

1804.7402 Policy.

Prospective contractors must be registered in the CCR database, prior to any award of a contract, purchase order, basic agreement, basic ordering agreement, or blanket purchase agreement after March 31, 2001. This policy applies to all types of awards except the following:

(a) Purchases made with a Government-wide commercial purchase card.

(b) Awards made to foreign vendors for work performed outside of the United States.

(c) Purchases under FAR 6.302–2, Unusual and Compelling Urgency.

1804.7403 Procedures.

(a)(1) The contracting officer must verify that the prospective awardee is registered in the CCR database using either the Cage Code, DUNS number or, if applicable, the DUNS+4 number, via the Internet at http://www.ccr2000.com or by calling toll free: 888–CCR–2423 (888–227–2423), commercial: 616–961–5757.

(2) Verification of registration is not required for orders or calls placed under contracts, basic agreements, basic ordering agreements, or blanket purchase agreements in which vendor registration was verified at the time of award of the contract or agreement.

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database after March 31, 2001, the contracting officer must—

(1) If delaying the acquisition would not be to the detriment of the Government, proceed to award after the contractor is registered;

(2) If delaying the acquisition would be to the detriment of the Government, proceed to award to the next otherwise successful registered offeror, with the written approval of the Procurement Officer; or

(3) If the offer results from an invitation for bids, determine the offer to be non-responsive and proceed to award to the next otherwise successful registered offeror.

(c) The contracting officer must protect against improper disclosure of contractor CCR information.

1804.7404 Solicitation provisions and contract clauses.

Except as provided in 1804.7402, the contracting officer must use the clause at 1852.204–74, Central Contractor Registration, in all solicitations and contracts, including those for commercial items.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.1—Dissemination of Information

Sec.
1805.101 Methods of disseminating information.

Subpart 1805.2—Synopses of Proposed Contracts

1805.205 Special situations.
1805.207 Preparation and transmittal of synopses.
1805.207–70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards.
1805.303–70 NASA Headquarters public announcement.
1805.303–71 Administrator's notice of significant contract actions (ANOSCAs).

Subpart 1805.4—Release of Information

1805.402 General public.
1805.403 Requests from Members of Congress.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40543, Aug. 5, 1996, unless otherwise noted.

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information. (NASA supplements paragraph (b))

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.205 Special situations. (NASA supplements paragraph (a))

(a) Potential sources responding to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation and, if they do not appear on the solicitation mailing lists established in accordance with FAR 14.205–1, shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources on established lists may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

(a) Synopses shall be transmitted in accordance with 1804.570.

[61 FR 40543, Aug. 5, 1996, as amended at 63 FR 9954, Feb. 27, 1998]

1805.207–70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

(a) Architect-engineering services. (1) Each notice publicizing the acquisition of architect-engineer services shall be headed ''C. Architect-Engineer Services.''

(2) In addition to meeting the requirements of FAR 5.207(c), the project description shall—

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(ii) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning ''Selection of firms for negotiations,'' the fourth additional consideration listed is changed to read: ''(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;'' and (b) in the last sentence, ''National Aeronautics and Space Administration'' is substituted for ''Department of Defense.''

(b) Federal Information Processing (FIP) Resources. (1) When total requirement quantities are expected to satisfy the needs of only a single field installation, each notice publicizing the acquisition of FIP resources under an indefinite delivery/idenfinite quantity contract or under a contract that includes options for additional quantities of such resources shall include the following:

The (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: (List other NASA installations and their locations).

(2) When the contemplated contract will authorize orders from locations other than the awarding installation, the notice shall fully describe the ordering scope.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards. (NASA supplements paragraph (a))

(a)(i) In lieu of the $3 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of $25 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of $25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than $25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303–70 have been completed.

1805.303–70 NASA Headquarters public announcement.

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

(1) A brief description of the work, including identification of the program and project;

(2) Identification of the contract action as either a new contract or additional work of services under an existing contract;

(3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) Name and address (including zip code) of the contractor;

(6) Principal work performance locations;

(7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature.

For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 p.m. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Associate Administrator for Procurement (Code HS).

1805.303–71 Administrator's notice of significant contract actions (ANOSCAs).

(a) In addition to the public announcement requirements described in 1805.303–70, contracting officers shall notify the Administrator of the following significant actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned contract award for competitive acquisitions of $25 million or more, including all priced options.

(2) Planned contract award of noncompetitive awards and new work modifications of $100 million or more, including all priced options.

(3) Planned award of other actions, to include cooperative agreements resulting from a Cooperative Agreement Notice (CAN), at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b) (1) through (10) of this subsection to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202–358–4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone of the impending transmission. In accordance with FAR 3.104–5(c), the contracting officer shall mark all pages that include source selection information with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104.'' The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over $1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) *For competitive selections only*, provide on a separate attachment the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting

information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303–70.

[61 FR 40543, Aug. 5, 1996, as amended at 62 FR 4466, Jan. 30, 1997; 63 FR 43099, Aug. 12, 1998]

Subpart 1805.4—Release of Information

1805.402 General public. (NASA paragraphs (1) and (2)

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, the following information on NASA acquisitions may be released:

(i) The names of firms invited to submit offers, and

(iii) The names of firms that attended any pre-bid or pre-proposal conferences.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

[62 FR 14016, Mar. 25, 1997]

1805.403 Requests from Members of Congress. (NASA supplements paragraph (a))

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative Affairs (Code L) for approval and release.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes (except CBD announcements) is not authorized in NASA.

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

Sec.
1806.202 Establishing or maintaining alternative sources.
1806.202–70 Formats.

Subpart 1806.3—Other Than Full and Open Competition

1806.302 Circumstances permitting other than full and open competition.
1806.302–4 International agreement.
1806.302–470 Documentation.
1806.302–7 Public interest.
1806.303 Justifications.
1806.303–1 Requirements.
1806.303–170 Sole-source purchases by contractors.
1806.303–2 Content.
1806.303–270 Use of unusual and compelling urgency authority.
1806.304–70 Approval of NASA justifications.

Subpart 1806.5—Competition Advocates

1806.501 Requirement.
1806.502 Duties and responsibilities.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40545, Aug. 5, 1996, unless otherwise noted.

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources. (NASA supplements paragraphs (a) and (b))

(a) The authority of FAR 6.202 is to be used to totally or partially exclude a particular source.

(b) The supporting data and the D&F must name the source to be excluded and shall include the following information as applicable and any other relevant information:

(i) The specific purpose to be served in excluding the source as enumerated in FAR 6.202(a).

(ii) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(iii) The circumstances making it necessary to exclude a particular source from the contract action:

(A) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(B) Current annual requirement and prospective needs for the supplies and services.

(C) Projected future requirements.

(iv) Whether the existing source must be totally excluded from the action or

whether a partial exclusion is sufficient.

(v) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(vi) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(A) Assumptions regarding future competition; and

(B) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(vii) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(A) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(B) A comparison of current production capacity with current and mobilization requirements; and

(C) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

§ 1806.202–70 Formats.

A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

FINDINGS

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because (5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because (5).

DETERMINATION

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date

NOTES:

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.

5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3—Other Than Full and Open Competition

§ 1806.302 Circumstances permitting other than full and open competition.

§ 1806.302–4 International agreement.

§ 1806.302–470 Documentation.

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302–4 is not required when the procurement officer signs a Memorandum for the Record that:

(a) Describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition; and

(b) Is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

[61 FR 40545, Aug. 5, 1996, as amended at 63 FR 12997, Mar. 17, 1998; 63 FR 32763, June 16, 1998]

1806.302–7 Public interest. (NASA supplements paragraph (c))

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs (Code L). Code HS shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302–7(c)(1) in any format that clearly documents the determination and the supporting findings.

[61 FR 40545, Aug. 5, 1996, as amended at 65 FR 12484, Mar. 9, 2000]

1806.303 Justifications.

1806.303–1 Requirements. (NASA supplements paragraphs (b) and (d))

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302–3(a)(2)(i) or FAR 6.302–7 to NASA Headquarters, Office of Procurement (Code HK), unless one of the exceptions at FAR 25.401 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303–1(d).

[61 FR 40545, Aug. 5, 1996, as amended at 64 FR 48561, Sept. 7, 1999; 65 FR 10031, Feb. 25, 2000; 65 FR 31102, May 16, 2000]

1806.303–170 Sole-source purchases by contractors.

The requirements of FAR part 6 and this part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where ''brand name or equal'' purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under 1811.104, the justification requirements of FAR part 6 and this part 1806 do not apply.

1806.303–2 Content.

1806.303–270 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302–2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303–2 and;

(a) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304–70 Approval of NASA justifications.

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR subparts 6.2 and 6.3 shall be obtained as follows:

(a) For proposed contracts over $500,000 but not exceeding $10,000,000—

(1) Concurring official: Procurement Officer

(2) Approving official: Center or Headquarters Competition Advocate.

(b) For proposed contracts over $10,000,000 but not exceeding $50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(2) Approving official: Center Director or Associate Administrator for Headquarters Operations.

(c) For proposed contracts over $50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(iii) Center Director or Associate Administrator for Headquarters Operations

(iv) Agency Competition Advocate

(2) Approving Official: Associate Administrator for Procurement

(d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(e) For proposed contract actions requiring approval by the Associate Administrator for Procurement, the original justification shall be forwarded to the Associate Administrator for Procurement (Code HS).

(f) Regardless of dollar value, class justifications shall be approved by the Associate Administrator for Procurement.

Subpart 1806.5—Competition Advocates

1806.501 Requirement. (NASA paragraphs (1), (2), (3) and (4))

(1) The Deputy Associate Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Headquarters Chief Financial Officer, Code CF, is the competition advocate for the Headquarters contracting activity.

(4) The Deputy Manager is the contracting activity competition advocate for the Space Station Program Office.

[61 FR 40545, Aug. 5, 1996, as amended at 64 FR 10571, Mar. 5, 1999]

1806.502 Duties and responsibilities. (NASA supplements paragraph (b))

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.

1807.103 Agency-head responsibilities.
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1807.7102 Submission, selection, and notification procedures.
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Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.
1807.7201 Definitions.
1807.7202 Policy.
1807.7203 Responsibilities.
1807.7204 Forecast data.
1807.7205 Public availability.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47068, Sept. 6, 1996, unless otherwise noted.

Subpart 1807.1—Acquisition Plans

1807.103 Agency-head responsibilities. (NASA supplements paragraphs (d) and (e))

(d)(i) Except as provided in paragraph (d)(iii) of this section, acquisition plans shall be prepared according to the following:

(A) For acquisitions requiring Headquarters approval, by an Acquisition Strategy Meeting (ASM) (see 1807.170);

(B) For acquisitions not requiring Headquarters approval and expected to exceed $5 million, by installation-approved ASMs or written acquisition plans; and,

(C) For acquisitions not expected to exceed $5 million, in accordance with installation procedures.

(ii) The estimated dollar amounts shall include all options and later phases of the same program or project.

(iii) Acquisition plans are not required for the following acquisitions:

(A) Architect-engineering services;

(B) Broad agency announcements (see 1835.016) or unsolicited proposals;

(C) Basic research from nonprofit organizations;

(D) Utility services available from only one source;

(E) From or through other Government agencies except when the value of the acquisition meets the Master Buy Plan threshold (see 1807.7101(a));

(F) Industrial facilities required in support of related contracts; or

(G) MidRange procedure awards (see part 1871). However, acquisition plans are required for commercial item acquisitions that exceed the MidRange dollar thresholds for noncommercial items.

(iv) Acquisition plans shall be approved before soliciting proposals.

(v) Approval of an acquisition plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. All required deviations shall be approved through the procedures described in FAR 1.4 and 1801.4.

(vi) A single acquisition plan may be used for all phases of a phased acquisition provided the plan fully addresses each phase, and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the plan shall be amended and approved at the same level as the original plan.

(e) Acquisition plans should be prepared on a program or system basis when practical. In such cases, the plan should fully address all component acquisitions of the program or system.

[61 FR 47068, Sept. 6, 1996, as amended at 65 FR 45306, July 21, 2000]

1807.104 General procedures (NASA supplements paragraph (a)).

(a) The acquisition planning team shall obtain input from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation

of safety, occupational health, environmental, information technology, export control, and security concerns (See NPG 8715.3, NASA Safety Manual; NPG 7120.5, NASA Program and Project Management Processes and Requirements; NPG 2810.1, Security of Information Technology, and NPG 1620.1, Security Procedures and Guidelines, all available at www.nodis.hq.nasa.gov).

[65 FR 37058, June 13, 2000]

1807.105 Contents of written acquisition plans. (NASA supplements paragraphs (a) and (b))

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR. Subheadings should be used when appropriate (e.g., the separate items under contracting considerations at 7.105(b)(4)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A. The requirements in FAR 7.105 regarding performance-based contracting methods shall not be limited to acquisition plans for service contracts.

(a)(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities.

(2) NPG 7120.5 shall be an integral part of acquisition planning for programs and projects subject to its requirements. If the NPG does not apply, the acquisition plan shall clearly state that fact. If the NPG does apply, specify whether all required NPG 7120.5 documentation is current and approved (see 1804.7301(b)(2)(i)). If not, describe the approach for obtaining approval or the authority to proceed without approval before release of draft or final solicitations. For programs and projects under the NPG, all draft or final solicitations subject to, or directly or substantially in support of, those programs or projects shall clearly identify the program or project of which they are part.

(3) Identify the estimated cost and describe the estimating methodology.

(5) Specify the delivery or performance period requirements separately by the basic contract, each option, and the total.

(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project Management Processes and Requirements). In addition to technical, schedule, and cost risks, the discussion shall include such considerations as: safety and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPG 2190, NASA Export Control Program); and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (*e.g.*, high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b)(1) If the acquisition represents a consolidation of efforts previously contracted for separately, address the reasons for the consolidation, the expected benefits, and any potential adverse impact (including the effect on small, small disadvantaged, and women-owned small business participation) and planned actions to mitigate the impact (see (1819.202–170).

(b)(3) Address how cost realism will be evaluated.

(4)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects.

(B) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR part 19 and part 1819).

(5)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by fiscal year and unique project number (UPN).

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(6) Identify the type of work statement/specification planned. Specifically address the applicability of performance-based requirement descriptions and the availability of commercial sources for the supplies/services.

(10) Address contract management issues, including planned delegations of administrative functions.

(20) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal SEB competitions), explain why that goal cannot be met.

[61 FR 47068, Sept. 6, 1996, as amended at 62 FR 36705, July 9, 1997; 62 FR 58687, Oct. 30, 1997; 63 FR 12997, Mar. 17, 1998; 64 FR 14641, Mar. 26, 1999; 65 FR 37058, June 13, 2000]

1807.107 Additional requirements for acquisitions involving bundling of contract requirements. (NASA supplements paragraphs (c) and (e))

(c) Requests for approval of proposed bundlings that do not meet the thresholds in FAR 7.107(b) must be sent to the Headquarters Office of Procurement (Code HS).

(e) The substantial bundling documentation requirement applies to each proposed NASA bundling expected to exceed $5 million or more. The contracting officer must forward the documentation along with the measurable benefits analysis required by FAR 7.107(b) to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 10 days for review.

[65 FR 46876, Aug. 1, 2000]

1807.107–70 Orders against Federal Supply Schedule contracts, Governmentwide acquisition contracts (GWACs), or other existing indefinite-delivery contracts.

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contract, or other indefinite-delivery contract if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

[65 FR 46876, Aug. 1, 2000]

1807.170 Acquisition Strategy Meeting (ASM).

(a) The ASM is an acquisition plan conducted through a meeting attended by all interested NASA offices. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decision, actions, and conclusions of the ASM members. The approved minutes, along with the briefing charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The ASM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Headquarters ASMs will be chaired by the Associate Administrator for Procurement or designee. The Headquarters Office of Procurement (Code HS) will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For field installation ASMs, the minutes shall be approved in accordance with installation procedures.

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

(NASA supplements paragraph (a))

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for

a significant savings, it should be transmitted immediately.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals. (NASA supplements paragraph (a))

(a) Installations shall establish appeals procedures in accordance with NMI 7410.3, Delegation of Authority for Acquisition of Commercial Activities for NASA's Use.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy. (NASA supplements paragraph (e))

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.

Subpart 1807.70—Consolidated Contracting

1807.7000 General.

The Consolidated Contracting Initiative (CCI) is NASA's commitment to the cooperative creation and utilization of contracts, whenever practicable, to meet common Agency needs. CCI aims at improving acquisition efficiency by identifying and logically combining similar requirements. Complete information on the initiative, with its implementation guidance, is available on the Internet (*http://procurement.nasa.gov/cgi-bin/CCI/first.cgi*).

[62 FR 36705, July 9, 1997, as amended at 63 FR 32763, June 16, 1998; 65 FR 45306, July 21, 2000]

Subpart 1807.71—Master Buy Plan

1807.7100 General.

The Master Buy Plan provides information on planned acquisitions to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive acquisitions.

1807.7101 Applicability.

(a) The Master Buy Plan applies to each negotiated acquisition, including supplemental agreements and acquisitions through or from other Government agencies, where the dollar value, including the aggregate amount of options, follow-on acquisitions, or later phases of multi-phase acquisitions, is expected to equal or exceed $50,000,000.

(b) For initial annual Master Buy Plan submission only, each installation shall submit its three largest acquisitions regardless of dollar value and all acquisitions over $50,000,000.

(c) The procedure also applies to:

(1) Any supplemental agreement that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if the absolute value of the actions equals or exceeds $50,000,000 (e.g., the absolute value of a supplemental agreement adding $30,000,000 of new work and deleting $30,000,000 of work is $60,000,000, and is therefore subject to the Master Buy Plan).

(2) Any supplement agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan, even though the value does not equal or exceed $50,000,000.

(3) Any cooperative agreement notice where the total value (the Government's contribution plus the contribution of the recipient) of any resulting cooperative agreement is expected to equal or exceed $50,000,000.

(4) Any acquisition designated by NASA Headquarters regardless of its value.

(d) The Master Buy Plan does not apply to incremental funding actions or termination settlement agreements.

[61 FR 47068, Sept. 6, 1996, as amended at 65 FR 45306, July 21, 2000]

1807.7102 Submission, selection, and notification procedures.

1807.7102–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Headquarters Office of Procurement

(Code HS) a Master Buy Plan (electronically or original and eight copies) for the next fiscal year, listing every known acquisition that

(1) Meets the criteria in 1807.7101,

(2) Is expected to be initiated in that fiscal year, and

(3) Has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list all uncompleted acquisitions selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans. These acquisitions should be listed by the appropriate fiscal year Master Buy Plan and individual item numbers, and should indicate the current status of the individual acquisition documents previously selected for Headquarters review and approval.

(c) Plans shall be prepared in accordance with 1807.7103 and shall identify the individual acquisition documents involved for every acquisition listed. Acquisition documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7102–3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

1807.7102–2 Submission of amendments to the Master Buy Plan.

(a) Acquisitions identified by installations after submission of their Master Buy Plan and meeting the criteria in 1807.7102–1(a) shall be submitted to Headquarters in accordance with 1807.7103 and identified as an amendment to the fiscal year Master Buy Plan submission.

(b) Master Buy Plan submissions should not be accomplished after the fact. Amendments shall be submitted sufficiently in advance of contract award date to allow Headquarters to select those acquisition documents that will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement.

(c) When timely submittal is not possible, the installation shall provide with the amendment a narrative explaining the circumstances leading to the late submittal. A Master Buy Plan submission for a contract change order expected to meet the criteria in 1807.7101 shall be submitted to Headquarters immediately upon issuance of the change order.

1807.7102–3 Selection and notification procedures.

(a) The Headquarters Office of Procurement (Code HS) shall select acquisition documents from the Master Buy Plan and amendments to Master Buy Plans to receive Headquarters review and approval and shall designate source selection officials.

(b) When, subsequent to document selection or delegation, an acquisition is changed (for example, increase or decrease in dollar amount, change in requirement), canceled, superseded, deferred, or becomes no longer subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7101, the installation shall immediately notify Code HS, giving the reasons. Code HS shall notify the installation's procurement office in writing of any further action that may be required.

(c) Acquisition documents not selected for Headquarters review will be subject to after-the-fact reviews by Headquarters during normal procurement management surveys or other special reviews. Acquisition delegations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7103 Format of Master Buy Plan.

In accordance with the requirements of 1807.7102–1 and 1807.7102–2, Master Buy Plans and amendments to Master Buy Plans shall be prepared in accordance with the format illustrated in Table 1807–1.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.

This subpart prescribes the acquisition forecasting procedure required to comply with the Business Opportunity Development Reform Act of 1988.

1807.7201 Definitions.

Class of contracts means a grouping of acquisitions, either by dollar value or

by the nature of supplies and services to be acquired.

Contract opportunity means planned new contract awards exceeding $25,000.

1807.7202 Policy.

As required by statute, it is NASA policy to

(a) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(b) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(c) Make available such forecasts to the public.

1807.7203 Responsibilities.

(a) NASA Procurement Officers shall post the data required by 1807.7204 directly to the NASA Acquisition Internet Service not later than October 1 for the annual forecast and April 15 for the semiannual update.

(b) Code HS will manage policy and monitor compliance with the NASA Acquisition Forecast process.

[64 FR 5620, Feb. 4, 1999]

1807.7204 Forecast data.

(a) The annual forecast shall contain—

(1) Summary historical data (based on information provided by the Headquarters Office of Procurement (Codes HC and HS)) on the class of contract opportunities below the simplified acquisition threshold;

(2) Identification of all known contract opportunities in excess of the simplified acquisition threshold. Each such action should be identified as one of the three broad categories of acqusition—Research and Development, Services, or Supplies and Equipment and shall include the following information:

(i) A brief description not to exceed ten typed lines;

(ii) Approximate dollar value within the following dollar ranges: $100,000 to $1,000,000; $1,000,000 to $5,000,000; and over $5,000,000;

(iii) Anticipated time (by fiscal year quarter) for the issuance of the solicitation;

(iv) Identification if it is reserved for performance by small business concerns including those owned and controlled by socially and economically disadvantaged individuals;

(v) Identification as competitive or noncompetitive; and

(vi) Identification and telephone number of a center point of contact.

(b) The semiannual report shall be an update of the data provided by the annual forecast. This update should provide information on new requirements not previously reported and on changes in data related to actions previously identified.

1807.7205 Public availability.

The annual forecast and semiannual update are available on the NASA Acquisition Internet Service (http://www.hq.nasa.gov/office/procurement/).

[62 FR 58687, Oct. 30, 1997]

TABLE 1807–1

FORMAT

MASTER BUY PLAN PROCEDURES

Line Item No.:	FY	Page No.:
Installation:		Date:

(1) Cognizant Head-quarters Office	(2) Descriptive Title of Procure-ment	(3) Estimated Dollar Value	(4) Acquisi-tion Plan	(5) JOFOC	(6) RFP

(7) SEB	(8) Pre-Neg	(9) Contract Review	(10) Current Status	(11) Remarks

INSTRUCTIONS

General

1. Prepare on 8½″x11″ paper or electronically.
2. List only *one* procurement on each page and number each page. Sequentially number each procurement action with a two digit ''Line Item Number'' beginning with ''01'' for each annual submission and subsequent amendments.
3. For the initial submissions only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.
4. Do not reproduce these instructions on the submission.

Supplementary instructions by heading number

(1) Include letter code and Headquarters contact, if known.

(2) Include an ''N'' to indicate new procurement or ''FO'' to indicate follow-on procurement.

(3) A range of dollar values may be used, if the exact value is unavailable. Express the range as $120M to $25M, $25M, $25M to $50M, and so forth in $25M increments. Include all phases of the procurement. All dollar values must be in real year dollars, *i.e.*, adjusted to include anticipated inflation.

(4) Installation recommendation (''Y'' or ''N'') that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission.)

(5)–(9) Use ''X'' to indicate applicable documents. If Column (7) contains an ''X'', include your recommendation in that column for the Source Selection Official (SSO). The recommendation should be either the Center SSO or Headquarters SSO (HSSO).

(10) Status should include scheduled date for next event. (Complete horizontally.)

(11) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the names and telephone numbers of the cognizant installation procurement person and technical representative. Indicate if the procurement will result in a bundled contract as defined in FAR 2.101.

[65 FR 46876, Aug. 1, 2000]

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
1808.002 Use of other Government supply sources.
1808.002–70 Acquisition of radioisotopes.
1808.002–71 Acquisition of liquid hydrogen.
1808.002–72 Acquisition of propellants.
1808.002–75 Acquisition of mercury.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

Subpart 1808.4—Federal Supply Schedules

1808.404 Using schedules.
1808.404–3 Requests for waivers.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

Subpart 1808.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

1808.705 Procedures.
1808.705–1 General.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.
1808.870 Contract clause.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 47073, Sept. 6, 1996, unless otherwise noted.

1808.002 Use of other Government supply sources.

1808.002–70 Acquisition of radioisotopes.

(a) U.S. Department of Energy Isotope and Technical Service Order Form CA–10–90.COM, and U.S. Nuclear Regulatory Commission Application for Material License, NRC Form 313, shall be used to acquire radioisotopes.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form CA–10–90.COM (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) NRC Form 313 and DOE Form CA–10–90.COM may be requisitioned directly from the United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

(d) Guidance is available from DOE at URL *http://www.ornl.gov/isotopes/catalog.htm.*

[64 FR 5620, Feb. 4, 1999, as amended at 65 FR 12484, Mar. 9, 2000]

1808.002–71 Acquisition of liquid hydrogen.

Requests for liquid hydrogen shall be submitted to the John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899, Attn: Director of Logistics Operations.

1808.002–72 Acqusition of propellants.

(a) General. NASA (and its contractors when authorized in accordance with 1851.1) may acquire the items listed in paragraph (j) of this section (except for liquid hydrogen; see 1808.002–71) on a reimbursable basis from the San Antonio Air Logistics Center (SA–ALC), Kelly Air Force Base, Texas, under the Air Force Missile Procurement Fund (MPF). The Air Force MPF shall be used as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of paragraph (f) of this section.

(b) Requests for acquisition. To obtain the materials listed in paragraph (j) of this section from the Air Force MPF, NASA contracting offices will

execute a NASA-Defense Purchase Request (NASA Form 523) (see 1853.303–523) and forward it to Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: SFS. The following additional information should be provided on the form:

(1) Contract number (when material is required for use by a NASA contractor).

(2) Delivery address.

(3) Mode of transportation (rail, trailer, barge, etc.). When the procurement request covers requirements for materials not previously forecasted or covers significant changes to previously reported requirements, SA–ALC should be notified immediately of such requirements.

(c) Delivery requests.

(1) A delivery request is a call on the Air Force, made against a NASA-Defense Purchase Request (NASA Form 523), specifying the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed in writing within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighting stations and scales (if weighing of the products before delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control: the last two digits of the calendar year; a dash; and a consecutive number beginning with 1 to run through the year (e.g., 89–5, for the fifth request made in 1989). Changes to a request are identified by adding an alphabetical designator beginning with (A) to the number.

(d) Receiving procedures.

(1) Receiving documents. Receipt of materials shall be evidenced on the receiving document received with the shipment by the signature of an individual authorized by NASA to receive materials from the Air Force. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document before signing.

(2) Weighing facilities. Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual weight at destination shall be obtained; and

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighting ticket shall be forwarded to Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: ACFOM, identifying the discrepancy.

(3) Distribution of receipts. Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) Billing. The costs of materials obtained through the MPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA–ALC to the NASA installation designated in the NASA Form 523.

(f) Reporting requirements.

(1) Field installations shall submit periodic estimates of requirements for materials listed in paragraph (j) of this section for all programs under their cognizance, including in-house contractor requirements. Reports shall be

submitted in duplicate on AF Form 858, Forecast of Propellant Requirements.

(2) The reports shall be forwarded no later than June 1 and December 1 to reach Headquarters, SA–ALC, Kelly AFB, TX 78241, Attn: SFS. Supplemental reports advising of additions to or significant changes in previous reports may be submitted at any time. The reports, covering all materials listed in paragraph (j) of this section, due in June and December, shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a 3-year period. Requirements shall be shown by month for the first 6 months, and by quarters for the remaining 2½-year period.

(3) Estimated requirements and other pertinent data required from contractors shall be obtained on Air Force Form 858.

(g) Report content. Reports shall be made using a separate report form for each material and shall provide, for each item of material, the—

(1) Contract number;

(2) Program and/or project;

(3) Specific task within the project;

(4) End use when not associated with the named program or project;

(5) Contractor's name;

(6) Specific location of use (shipping destination); and

(7) Planned source of supply.

(h) Basis for developing materials requirements. In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to contract for materials, estimates must be as accurate as possible.

(i) NASA coordination. The Kennedy Space Center shall coordinate the review of all data and establish NASA policy and procedures. The data shall be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) Table of reportable materials.

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0–A–445

Argon Gas, 6000 PSI, AFPID 6830–5

Propellant, Ammonia, Liquid, Anhydrous 99.5 percent purity, Spec MIL–P–27406

Propellant, Chlorine Trifluoride, Spec MIL–P–81399

Propellant, Deuterium, Gaseous, AFPID 9135–20

Propellant, Fluorine, Gaseous, Spec MIL–P–27405

Propellant, Fluorine, Liquid, Spec MIL–P–27405

Helium, Technical Grade A, Spec BB–H–1168

Propellant, Isopropyl Alcohol, AFPID 9135–18

Propellant, Hydrazine, Standard Grade, Spec MIL–P–26536

Propellant, Hydrazine, Monopropellant Grade, Spec MIL–P–26536

Propellant, Hydrazine/Unsymmetrical Dimethylhydrazine, Spec MIL–P–27402

Propellant, Hydrogen, Gaseous, Type I, Spec MIL–P–27201

Propellant, Hydrogen, Liquid, Type II, Spec MIL–P–27201

Propellant, Hydrogen Peroxide, Spec MIL–P–16005

Propellant, Hydrogen Peroxide, Electrolytic Process, Spec MIL–P–16005

Propellant, Jet Fuel, Grade RJ–1, Spec MIL–F–25558

Propellant, JPX, 50 percent UDMH–50 percent JP–4, Spec MIL–P–26694

Propellant, JPX, 17 percent UDMH–83 percent JP–4, Spec MIL–P–26694

Propellant, Kerosene, Grade RP–1, Spec MIL–P–25576

Propellant, Monomethyl Hydrazine, Spec MIL–P–27404

Propellant, Neon, Liquid, AFPID 9135–16

Propellant, Nitric Acid, Type IIIB, Spec MIL–P–7254

Propellant, Nitric Acid, Type III LS, Spec MIL–P–7254

Propellant, Nitric Acid, Type IV (High Density Acid), Spec MIL–P–7254

Propellant, Nitrogen Tetroxide (NTO) (MON–1) (MON–3), Spec MIL–P–26539

Propellant, Nitrogen Tetroxide (NTO), MIL–P–26539

Propellant, Nitrogen Tetroxide (MON–1), Spec MIL–P–26539

Propellant, Nitrogen Tetroxide (MON–3), Spec MIL–P–26539

Propellant, Oxygen, Grade B, Spec MIL–P–25508

Propellant, Oxygen, Grade A, Spec MIL–P–25508

Propellant, Oxygen, Grade F, Spec MIL–P–25508

Propellant Pressurizing Agent, Helium, Spec MIL–P–27407, 99.995 pct min assay

Propellant Pressurizing Agent, Nitrogen, Type II, Liquid Grade C, Spec MIL–P–27401

Propellant Pressurizing Agent, Nitrogen, Type I, Gaseous Grade A, Spec MIL–P–27401

Propellant Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL–P–27401

Propellant Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL–P–27401

Propellant Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL–P–27401

Propellant, Unsymmetrical Dimethylhydrazine, Spec MIL–P–25604

Propellant, Nitrogen Trifluoride Spec MIL–P–87896

Propellant, Pressurizing Agent, Argon, Liquid, AFPID 9135–19

[61 FR 47073, Sept. 6, 1996, as amended at 65 FR 46627, July 31, 2000]

1808.002–75 Acquisition of mercury.

(a) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Mercury Contract Specialist, Directorate of Stockpile Contracts, DLA, Defense National Stockpile Center, 8725 John J. Kingman Rd., #3339, Ft. Belvoir, VA 22060–6223. DLA will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(b) Requests for clearance to purchase quantities of 76 pounds or more from sources other than DLA shall be submitted to the office in paragraph (a) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA Equipment Management System (NEMS) Coordinator.

Subpart 1808.4—Federal Supply Schedules

1808.404 Using schedules.

1808.404–3 Requests for waivers. (NASA supplements paragraphs (a) and (b)).

(a) The head of the NASA office initiating the procurement request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased and explaining why similar items listed in the applicable schedule will not meet the requirement.

(b) If a waiver is not granted, the case shall be referred to the Associate Administrator for Procurement (Code HS) for a final decision as to whether the non-schedule item will be purchased. The Associate Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances. (NASA supplements paragraphs (a) and (c)).

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes occur, the contracting officer shall refer the matter to the Associate Administrator for Procurement (Code HS) for review and

any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.7—Acquisition From Nonprofit Agencies Employing People Who are Blind or Severely Disabled

1808.705 Procedures.

1808.705–1 General.

The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used to obtain nonprofit agency-produced supplies from GSA supply distribution facilities.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy. (NASA supplements (paragraph (b)).

(b) (i) The Headquarters Information Resources Management Division (Code JT) is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to Code JT. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000;

(B) The order is not of a continuing or repetitive nature; and,

(C) The Public Printer certifies it cannot be provided more economically through the GPO.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208–81, Restrictions on Printing and Duplicating, in solicitations and contracts where there is a requirement for any printing, and/or any duplicating/copying in excess of that described in paragraph (c) of the clause.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NPD 6000.1, Transportation Management.

[61 FR 47073, Sept. 6, 1996, as amended at 65 FR 12484, Mar. 9, 2000]

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

Sec.
1809.104–4 Subcontractor responsibility.
1809.106 Preaward surveys.
1809.106–1 Conditions for preaward surveys.
1809.106–2 Requests for preaward surveys.
1809.106–3 Interagency preaward surveys.
1809.106–70 Preaward surveys performed by NASA installations.

Subpart 1809.2—Qualifications Requirements

1809.200 Scope of subpart.
1809.202 Policy.
1809.203 QPL's, QML's, and QBL's.
1809.203–70 General.
1809.203–71 Waiver of qualification requirements.
1809.206 Acquisitions subject to qualification requirements.
1809.206–1 General.
1809.206–70 Small businesses.
1809.206–71 Contract clause.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.
1809.404 List of Parties Excluded from Federal Procurement and Nonprocurement programs.
1809.405 Effect of listing.
1809.405–1 Continuation of current contracts.
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1809.407–3 Procedures.
1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.
1809.470–1 Situations requiring reports.
1809.470–2 Contents of reports.
1809.470–3 Addresses and copies of reports.

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.
1809.503 Waiver.

1809.506 Procedures.
1809.507 Solicitation provisions and contract clause.
1809.507–2 Contract clause.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47075, Sept. 6, 1996, unless otherwise noted.

Subpart 1809.1—Responsible Prospective Contractors

1809.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination.

Upon request, CCC shall be furnished the rationale for any subsequent determination of nonresponsibility.

1809.106 Preaward surveys.

1809.106–1 Conditions for preaward surveys. (NASA supplements paragraph (a)).

(a)(i) Preaward surveys are used only to assist the contracting officer to make determinations of responsibility under FAR 9.104. They are not to be used to obtain information useful to proposal evaluation that does not directly relate to the responsibility determination. Accordingly, preaward surveys shall not be used except in rare circumstances when determination of responsibility cannot be made without the specific information that can be provided only in a preaward survey report and only after all other means of obtaining the required information have been explored.

(ii) Surveys shall not be performed for companies of any size performing study or research contracts.

(iii) The procurement officer shall approve all preaward survey requests.

1809.106–2 Requests for preaward surveys. (NASA supplements paragraph (a))

(a) The ''Walsh-Healey Public Contracts Act'' block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

1809.106–3 Interagency preaward surveys. (NASA supplements paragraph (a))

If the survey will be performed for NASA by a DOD agency, the SF 1403 request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

[61 FR 47075, Sept. 6, 1996, as amended at 62 FR 36705, July 9, 1997]

1809.106–70 Preaward surveys performed by NASA installations.

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

Subpart 1809.2—Qualifications Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts consistent with the policies of NASA Policy Directive 8730.2, NASA Parts Policy.

[64 FR 36606, July 7, 1999]

1809.202 Policy. (NASA supplements paragraphs (a) and (e))

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's and QBL's.

1809.203–70 General. (NASA supplements paragraph (a))

(a) The Deputy Associate Administrator for the Office of Safety and Mission Assurance (Code Q), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA EEE Parts and Advanced Interconnect Program.

1809.203–71 Waiver of qualification requirements.

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206–1 General. (NASA supplements paragraph (b) and (c))

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a non-emergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206–70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil–Bul–103) or the Qualified Manufacturers List (QML–38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR subpart 19.6 are applicable.

1809.206–71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209–70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

For purposes of FAR subpart 9.4 and this subpart, the Associate Administrator for Procurement is the ''debarring official,'' the ''suspending official,'' and the agency head's ''designee.''

1809.404 List of parties excluded from Federal procurement and non-procurement programs. (NASA supplements paragraphs (c) and (d))

(c) The Office of Procurement (Code HK) is responsible for taking the actions listed in FAR 9.404(c).

(d)(1) Installation procurement offices shall notify Code HK of how many

copies of the List they want and provide a single mailing address at the installation. Code HK will place the order for the copies which will be mailed directly to the installation. Electronic access is also available as described in the List.

[61 FR 47075, Sept. 6, 1996, as amended at 63 FR 32763, June 16, 1998]

1809.405 Effect of listing

If it is believed that a new contract or subcontract must be awarded to a firm on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the procurement officer shall prepare a request for a determination with all necessary supporting information and forward it to the Associate Administrator for Procurement (Code HK) for approval.

[61 FR 47075, Sept. 6, 1996, as amended at 63 FR 32763, June 16, 1998]

1809.405–1 Continuation of current contracts. (NASA supplements paragraph (c))

(c) Approval of contract renewals or extensions shall be requested in accordance with 1809.405.

1809.405–2 Restrictions on subcontracting. NASA supplements paragraph (a)).

(a) Approval of consent to subcontract shall be requested in accordance with 1809.405.

1809.406 Debarment.

1809.406–3 Procedures. (NASA supplements paragraph (a))

(a) The report required by FAR 9.406–3(a) shall be prepared in accordance with 1809.470.

1809.407 Suspension.

1809.407–3 Procedures. (NASA supplements paragraph (a))

(a) Reports shall be prepared in accordance with 1809.470.

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters. (NASA supplements paragraph (a))

(a)(2) (A) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer shall immediately notify the Associate Administrator for Procurement (Code HK), providing details as known, and shall await a response before awarding the contract.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Associate Administrator for Procurement (Code HK) in accordance with 1809.470.

[61 FR 47075, Sept. 6, 1996, as amended at 63 FR 32763, June 16, 1998]

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470–1 Situations requiring reports.

A report incorporating the information required by 1809.470–2 of this subpart shall be forwarded by the procurement officer to the Associate Administrator for Procurement (Code HK) when a contractor:

(a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2; or

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR by changes of address, multiple addresses, formation of new companies, or other devices.

[61 FR 47075, Sept. 6, 1996, as amended at 63 FR 32763, June 16, 1998]

1809.470–2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(j) Recommendation as to

(1) Whether the contractor should be suspended or debarred,

(2) Whether any limitations should be applied to such action,

(3) Whether current contracts should be terminated, and

(4) The period of any debarment.

(k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470–3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted to the Office of Procurement (Code HK), with an additional copy to the Headquarters Office of General Counsel (Code G).

[61 FR 47075, Sept. 6, 1996, as amended at 63 FR 32763, June 16, 1998]

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.

The Associate Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Associate Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Associate Administrator for Procurement (Code HS) for action.

1809.506 Procedures. (NASA supplements paragraph (b))

(b) The approving official is the procurement officer when the installation has source selection authority and the Associate Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

1809.507 Solicitation provisions and contract clause.

1809.507–2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209–71, Limitation of Future Contracting, in solicitations and contracts.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209–72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1811—DESCRIBING AGENCY NEEDS

Sec.
1811.002 Policy.

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.101 Order of precedence for requirements documents.
1811.107 Solicitation provisions.

Subpart 1811.4—Delivery or Performance Schedules

1811.403 Supplies or services.
1811.403–70 Packaging, handling, and transportation.
1811.404 Contract clauses.
1811.404–70 NASA contract clauses.

Subpart 1811.5—Liquidated Damages

1811.502 Policy.

Subpart 1811.6—Priorities and Allocations

1811.602 General.
1811.603 Procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47078, Sept. 6, 1996, unless otherwise noted.

1811.002 Policy. (NASA supplements paragraph (b))

(b) Implementation of the Metric Conversion Act of 1975, as amended, must be in accordance with NPD 8010.2B, Use of the Metric System of Measurements in NASA Programs.

[61 FR 47078, Sept. 6, 1996, as amended at 65 FR 37061, June 13, 2000]

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.101 Order of precedence for requirements documents. (NASA supplements paragraph (b))

(b) When establishing product descriptions in either a solicitation or contract, contracting officers shall include safeguards, as applicable, to ensure safety, security, and environmental protection.

[65 FR 37058, June 13, 2000]

1811.107 Solicitation provisions. (NASA supplements paragraph (b))

(b) NASA uses the categorical method to report its use of voluntary consensus standards.

Therefore, use of the provision at 52.211–7 is not required. However, contracting officers must include in draft RFPs (DRFPs) the information required by 1815.201(c)(6)(A).

[65 FR 12484, Mar. 9, 2000]

Subpart 1811.4—Delivery or Performance Schedules

1811.403 Supplies or services. (NASA supplements paragraph (a))

(a)(3) Contract delivery or performance schedules must not be expressed in terms of a notice of award. A notice of award as a specific document, separate from the award document itself, is not a contractual document and must not be used as a reference point for contract performance. See 1814.408 for additional information on notices of award.

[61 FR 47078, Sept. 6, 1996, as amended at 65 FR 37062, June 13, 2000]

1811.403–70 Packaging, handling, and transportation.

(a) NPG 6000.1E, ''Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components'' provides guidance for shipment of certain NASA items.

(b) Contracting officers, with the advice of the requiring activity and the Center Transportation Officer, must include a designation of each deliverable item, or groupings of deliverable items, as Class I, II, III, or IV for purposes of contractor compliance with the NPG.

[65 FR 37062, June 13, 2000]

811.404 Contract clauses. (NASA supplements paragraph (a))

(a)(2) FAR 52.211–8, Time of Delivery, Alternates II and III, must not be used in NASA contracts.

(3) FAR 52.211–9, Desired and Required Time of Delivery, Alternates II

and III, must not be used in NASA contracts.

[61 FR 47078, Sept. 6, 1996, as amended at 65 FR 37062, June 13, 2000]

1811.404–70 NASA contract clauses.

The clause at 1852.211–70, Packaging, Handling, and Transportation, must be included in solicitations and contracts for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring).

[65 FR 37062, June 13, 2000]

Subpart 1811.5—Liquidated Damages

1811.502 Policy. (NASA supplements paragraph (d))

(d) The procurement officer must forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

[61 FR 47078, Sept. 6, 1996, as amended at 65 FR 37062, June 13, 2000]

Subpart 1811.6—Priorities and Allocations

1811.602 General. (NASA supplements paragraph (c))

(c) The Department of Defense is the ''Delegate Agency'' for NASA. The Headquarters Office of Procurement (Code HS) must coordinate with DOD, as necessary, to ensure that any DOD requirements are met.

[61 FR 47078, Sept. 6, 1996, as amended at 65 FR 37062, June 13, 2000]

1811.603 Procedures. (NASA supplements paragraphs (e) and (g))

(e)(i) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in paragraph (e)(ii) of this section. Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(ii) Priority ratings will not be issued for the following:

(A) Items ordered or requisitioned from the GSA Federal Supply Service.

(B) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(C) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(D) Items falling under the jurisdiction of agencies other than NASA's Delegate Agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radio-isotopes, stable isotopes, source material and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(iii) All other NASA orders must be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency.

(iv) The program identification numbers (DPAS, 15 CFR part 700, SCH L.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B8 Production Equipment (for Contractor's Account)
B9 Production Equipment (Government-Owned)
C2 Construction
C3 Maintenance, Repair, and Operating Supplies for Facilities
C9 Miscellaneous/Other

(g) Installation requests for assistance shall be directed to the Headquarters Office of Procurement (Code HS).

[61 FR 47078, Sept. 6, 1996, as amended at 65 FR 37062, June 13, 2000]

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1812.1—Acquisition of Commercial Items—General

Sec.
1812.102 Applicability.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
1812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commerical Items

1812.404 Warranties.

Subpart 1812.70—Commercial Space Hardware or Services

1812.7000 Prohibition on guaranteed customer bases for new commercial space hardware or services.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47079, Sept. 6, 1996, unless otherwise noted.

Subpart 1812.1—Acquisition of Commercial Items—General

1812.102 Applicability. (NASA supplements paragraph (c))

(c) For the acquisition of commercial items of any value, the MidRange procedures described in part 1871 may be used to the extent they are consistent and compliant with FAR part 12 and part 1812. Unless specifically stated, in any conflict between these parts the descending order of precedence is FAR part 12, part 1812, and part 1871.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items. (NASA supplements paragraph (f))

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.204–74, Central Contractor Registration.

(B) 1852.214–71, Grouping for Aggregate Award.

(C) 1852.214–72, Full Quantities.

(D) 1852.215–84, Ombudsman.

(E) 1852.219–75, Small Business Subcontracting Reporting.

(F) 1852.219–76, NASA 8 Percent Goal.

(G) 1852.223–70, Safety and Health.

(H) 1852.223–71, Frequency Authorization.

(I) 1852.223–73, Safety and Health Plan.

(J) 1852.223–75, Major Breach of Safety and Security.

(K) 1852.228–72, Cross-Waiver of Liability for Space Shuttle Services.

(L) 1852.228–76, Cross-Waiver of Liability for Space Station Activities.

(M) 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.

(N) 1852.246–72, Material Inspection and Receiving Report.

[64 FR 19926, Apr. 23, 1999, as amended at 64 FR 51078, Sept. 21, 1999; 65 FR 37058, June 13, 2000; 65 FR 50153, Aug. 17, 2000]

1812.302 Tailoring of provisions and clauses for the acquisition of commercial items. (NASA supplements paragraph (c))

(c) The Associate Administrator for Procurement (Code HS) is the approval authority for waivers. Requests shall be prepared and submitted in accordance with 1801.471.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

1812.404 Warranties.

(b) In acquisitions under the Simplified Acquisition Threshold specified in FAR part 13, no express warranty should be required other than the offeror's commercial warranty.

Subpart 1812.70—Commercial Space Hardware or Services

1812.7000 Prohibition on guaranteed customer bases for new commercial space hardware or services.

Public Law 102–139, title III, Section 2459d, prohibits NASA from awarding a contract with an expected duration of more than one year if the primary effect of the contract is to provide a guaranteed customer base for, or establish an anchor tenancy in, new commercial space hardware or services. Exception to this prohibition may be authorized only by an appropriations Act specifically providing otherwise.

[63 FR 40189, July 28, 1998]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1813.000 Scope of part.
1813.003 Policy.

Subpart 1813.1 Procedures

1813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
1813.106–3 Award and documentation.

Subpart 1813.3 Simplified Acquisition Methods

1813.301 Governmentwide commercial purchase card.
1813.301–70 Purchase card documentation.
1813.301–72 Approving official.
1813.301–73 Program officials.
1813.302 Purchase orders.
1813.302–1 General.
1813.302–70 Purchase orders under section 8(a) of the Small Business Act.
1813.303 Blanket Purchase Agreements (BPAs).
1813.303–3 Preparation of BPAs.
1813.307 Forms.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 63 FR 40189, July 28, 1998, unless otherwise noted.

1813.000 Scope of part.

FAR Part 13 and 1813 do not apply to NASA Research Announcements (NRA) and Announcements of Opportunity (AO). These acquisitions shall be conducted in accordance with the procedures in 1835.016–71 and 1872, respectively. However, awards resulting from NRAs or AOs that are to be made as procurement instruments, can be made as either a contract or a purchase order. When a purchase order is used, it must not exceed the simplified acquisition threshold and must include the appropriate clauses pertaining to data rights, key personnel requirements, and any other requirements determined necessary by the contracting officer. Contracting officers must determine whether obtaining the contractor's acceptance of the order is necessary (see FAR 13.302–3(a)).

[65 FR 46628, July 31, 2000]

1813.003 Policy. (NASA supplements paragraph (g))

(g) Acquisitions under these simplified acquisition procedures shall be fixed-price, except as provided under the unpriced purchase order method in FAR 13.302–2.

[63 FR 40189, July 28, 1998, as amended at 64 FR 5620, Feb. 4, 1999]

Subpart 1813.1—Procedures

1813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

1813.106–3 Award and documentation. (NASA supplements paragraph (b))

(b)(3)(ii) For purchases up to $50,000, documentation shall be limited to a brief notation in the file indicating the rationale for selecting other than the lowest priced offer.

Subpart 1813.3—Simplified Acquisition Methods

1813.301 Governmentwide commercial purchase card. (NASA supplements paragraphs (a), (b), and (c))

(a) The procurement officer or deputy procurement officer shall designate individual cardholders in accordance with center procedures, subject to the following limitations:

(i) Personnel other than contracting officers may be designated as cardholders for micro-purchases and for individual orders under BPAs up to $5,000 (see 1813.303–3(a)(4)), provided they complete training adequate to ensure appropriate use of the purchase card.

(ii) The procurement officer's designation shall be in writing and shall specify the scope of the cardholder's authority.

(iii) The center shall establish and maintain administrative procedures and management controls required by the General Services Administration

(GSA). Purchases made with the Governmentwide commercial purchase card shall comply with the instructions and procedures issued by GSA as well as applicable parts of the FAR and NFS.

(b) The Governmentwide commercial purchase card may be used to order and pay for purchases under contracts established under FAR Part 8 procedures, up to the simplified acquisition threshold (except see paragraph (a)(i) of this section for dollar limitations for personnel other than contracting officers).

(c) The Governmentwide commercial purchase card may be used to order and pay for purchases in the circumstances described in FAR 13.301(c) up to the simplified acquisition threshold (except see paragraph (a)(i) of this section for limitations for personnel other than contracting officers). Except as authorized in paragraphs (b) and (c) of this section, the Governmentwide commercial purchase card may not be used for purchases in excess of $25,000. Purchases above the micro-purchase threshold shall comply with all applicable statutory and regulatory requirements, including the following:

(i) Small business set-aside (see FAR 13.003(b)).

(ii) Representations and certifications. The applicable items from the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, shall be obtained for commercial or noncommercial purchases. This information may be obtained orally from vendors.

(iii) Maximum practicable competition (see FAR 13.106–1).

(iv) Implementation of the applicable contract clauses. This requirement may be satisfied by forwarding a completed SF 1449, appropriately modified to reflect purchase card terms, to the awardee after placing the order via the card, provided that the awardee must be notified of, and agree to, the applicability of the SF 1449 clauses when the order is placed.

[63 FR 40189, July 28, 1998, as amended at 65 FR 12484, Mar. 9, 2000]

1813.301–70 Purchase card documentation.

Documentation of purchases shall be minimized. For transactions below the micro-purchase threshold, the card holder shall maintain a brief log of purchases and a file of monthly purchase card statements indicating whether item receipt has occurred. For purchases above the micro-purchase threshold, see 1813.106–3(b)(3)(ii).

1813.301–72 Approving official.

The approving official is the individual who reviews and approves a cardholder's monthly statement of purchases. The approving official shall be the cardholder's immediate or higher level supervisor; in no case shall cardholders approve their own statement of purchases. Unless center procedures otherwise provide for their designation, the procurement officer shall designate approving officials.

1813.301–73 Program officials.

(a) The Langley Research Center, Office of Procurement (Code AG), is the agency program coordinator.

(b) The procurement officer shall identify the center program coordinator and the center billing office point of contact, and provide their names to the agency program coordinator.

[63 FR 40189, July 28, 1998, as amended at 64 FR 51079, Sept. 21, 1999]

1813.302 Purchase orders.

1813.302–1 General. (NASA supplements paragraph (a))

(a) See 1813.003(h).

1813.302–70 Purchase orders under section 8(a) of the Small Business Act.

Purchase orders made using simplified acquisition procedures are authorized for 8(a) acquisitions under the simplified acquisition threshold.

1813.303 Blanket Purchase Agreements (BPAs).

1813.303–3 Preparation of BPAs. (NASA supplements paragraph (a))

(a)(4) Non-GS–1102 or –1105 personnel shall not be authorized to place individual orders under a BPA in an amount greater than $5,000. For sole

source orders above $2,500, a contracting officer's determination is required in accordance with FAR 13.106–1(b)(1).

1813.307 Forms. (NASA supplements paragraphs (b), (c), and (d))

(b) Installations may use locally prescribed forms.

(c) Installations may use locally prescribed forms.

(d) The SF 44 may be used for purchases of aviation fuel and oil of $10,000 or less.

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201 Preparation of invitations for bids.
1814.201–5 Part IV—Representations and instructions.
1814.201–6 Solicitation provisions.
1814.201–670 NASA solicitation provisions.

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.
1814.404–1 Cancellation of invitations after opening.
1814.407 Mistakes in bids.
1814.407–3 Other mistakes disclosed before award.
1814.407–4 Mistakes after award.
1814.408 Award.
1814.408–1 General.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47079, Sept. 6, 1996, unless otherwise noted.

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201–5 Part IV—Representations and instructions. (NASA supplements paragraph (c))

(c) Section M, Evaluation factors for award.

(i) The contracting officer shall state if award is to be made in the aggregate (all-or-non basis) or by specified groups of items.

(ii) if bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

1814.201–6 Solicitation provisions.

1814.201–670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214–70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214–21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of certain items. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214–72, Full Quantities, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than the full quantities solicited.

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference. See 1815.209–70(a).

[61 FR 47079, Sept. 6, 1996, as amended at 63 FR 9966, Feb. 27, 1998]

Subpart 1814.3—Submission of Bids

1814.302 Bid submission. (NASA supplements paragraph (b))

(b) NASA contracting officers shall not consider telegraphic bids communicated by the telephone.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.

1814.404–1 Cancellation of invitations after opening. (NASA supplements paragraphs (c) and (e))

(c) The authority to make the determination at FAR 14.404–1(c) is delegated to the contracting officer, except as provided in paragraph (e)(1) of this subsection.

(e)(1) A determination that includes an authorization to complete the acquisition through negotiation shall be made by the procurement officer, in consultation with the chief counsel.

1814.407 Mistakes in bids.

1814.407–3 Other mistakes disclosed before award. (NASA supplements paragraph (e))

(e) Procurement officers are authorized to make the determinations under 14.407–3 (a), (b), (c) and (d).

1814.407–4 Mistakes after award. (NASA supplements paragraph (d))

(d) Determinations shall be made by the procurement officer.

1814.408 Award.

1814.408–1 General.

(1) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government (considering only price and price-related factors) and that the formal award will be made upon satisfaction of specified pre-performance conditions.

(2) The notice of award is not a contractual instrument. It does not authorize the successful bidder to perform and, in itself, does not obligate the Government to award a contractual document. Its limited purpose is to provide: evidence of the Government's selection of the successful bidder; instruction to that bidder to satisfy specified pre-performance conditions; and a statement that the Government intends to award the contract to the successful bidder upon satisfaction of these conditions if a contract is awarded as a result of the invitation for bids.

(3) Use of a notice of award is optional. The contracting officer may issue the award document itself without first issuing a notice of award. However, there are instances when a notice of award should be considered, for example, in construction contracts where performance or payment bonds are required. In such cases, the most cost effective technique is to require only the successful bidder to provide the necessary bonds. The notice of award advises the successful bidder to provide the bonds, and it also serves as formal evidence from the Government of the impending award if such evidence is required to secure the bonds.

(4) The notice of award shall not be issued unless bids have been evaluated and a selection made, and a definitive contract document is ready for execution upon satisfaction of the conditions specified in the notice. Upon satisfaction of these conditions, the approved and executed contract instrument shall be provided to the successful bidder.

(5) Since the notice of award is not a contractual document authorizing performance, the period of performance of the resultant contract shall not be based on the date of issuance or receipt of the notice of award. The period of performance specified in the contract shall be based on some other reference point, such as the date the contract is provided to the successful bidder, a mutually agreeable effective date of a later authorization to proceed date.

(6) The notice of award can be issued by any formal written means such as a letter, telegram or electronic means. The notice should be substantially the same as the following format.

Format

Subject: Notice of Award—Invitation for Bids (IFB) (a). This notice is to advise you that your bid (b) in response to the subject IFB has been determined to be the most advantageous to the Government (considering only price and price-related factors). It is the Government's intention to award you a contract in the amount of (c) for this effort pending satisfaction of the following pre-performance conditions: (d)

Evidence (e) of satisfaction of these conditions must be provided to the contracting officer by (f). In the event these conditions are

not satisfied by this date, the Government reserves the right to award the contract to the bidder who submitted the next most advantageous bid.

Please note that this notice of award is not a contractual document. It does not obligate the Government to award you, or any other bidder, a contract relative to the subject IFB, and it does not authorize you to proceed with contract performance or incur costs pursuant to such performance. Any costs incurred for contract performance prior to your receipt of a fully executed contract document are at your own risk and are not recoverable under any Government contract should the Government fail, for whatever reason, to award you a contract in response to the subject IFB.

If a contract is awarded after evidence of satisfaction of the pre-performance conditions listed above is provided to the contracting officer by the specified due date, the date of commencement of work will be provided with the formal award. This date will be based on (g).

NOTES.—The contracting officer shall insert, where shown, the following information:

(a) Identification of the IFB by number and title.

(b) Identification of the contractor's bid.

(c) The award price.

(d) The preperformance conditions (e.g., any required payment and performance bonds).

(e) The evidence required to satisfy the pre-performance conditions (e.g., the actual payment and performance bonds).

(f) The date by which the evidence must be provided to the contracting officer.

(g) Identification of the date for commencement of performance. The period of performance of the contract shall not be based on the date of issuance or receipt of the notice of award. It shall be based on the date the contract is provided to the successful bidder, a mutually agreeable effective date, or a later authorization to proceed date.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

Sec.
1815.201 Exchanges with industry before receipt of proposals.
1815.203 Requests for proposals.
1815.203–70 Installation reviews.
1815.203–71 Headquarters reviews.
1815.203–72 Risk Management.
1815.204 Contract format.
1815.204–2 Part I—The Schedule.
1815.204–5 Part IV—Representations and instructions.
1815.204–70 Page limitations.
1815.207 Handling proposals and information.
1815.207–70 Release of proposal information.
1815.207–71 Appointing non-Government evaluators as special Government employees.
1815.208 Submission, modification, revision, and withdrawal of proposals.
1815.209 Solicitation provisions and contract clauses.
1815.209–70 NASA solicitation provisions.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.
1815.300–70 Applicability of subpart.
1815.303 Responsibilities.
1815.304 Evaluation factors and significant subfactors.
1815.304–70 NASA evaluation factors.
1815.305 Proposal evaluation.
1815.305–70 Identification of unacceptable proposals.
1815.305–71 Evaluation of a single proposal.
1815.306 Exchanges with offerors after receipt of proposals.
1815.307 Proposal revisions.
1815.308 Source selection decision.
1815.370 NASA source evaluation boards.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.
1815.403–1 Prohibition on obtaining cost or pricing data.
1815.403–170 Waivers of cost or pricing data.
1815.403–3 Requiring information other than cost or pricing data.
1815.403–4 Requiring cost or pricing data.
1815.404 Proposal analysis.
1815.404–2 Information to support proposal analysis.
1815.404–4 Profit.
1815.404–470 NASA Form 634.
1815.404–471 NASA structured approach for profit or fee objective.
1815.404–471–1 General
1815.404–471–2 Performance risk.
1815.404–471–3 Contract type risk and working capital adjustment.
1815.404–471–4 Other considerations.
1815.404–471–5 Facilities capital cost of money.
1815.404–471–6 Modification to structured profit/fee approach for nonprofit organizations.
1815.404–472 Payment of profit or fee under letter contracts.
1815.406 Documentation.
1815.406–1 Prenegotiation objectives.
1815.406–170 Content of the prenegotiation position memorandum.
1815.406–171 Installation reviews.
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1815.406–3 Documenting the negotiation.
1815.407 Special cost or pricing areas.
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1815.408 Solicitation provisions and contract clauses.
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Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.
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Subpart 1815.6—Unsolicited Proposals

1815.602 Policy.
1815.604 Agency points of contact.
1815.606 Agency procedures.
1815.606–70 Relationship of unsolicited proposals to NRAs.
1815.609 Limited use of data.
1815.609–70 Limited use of proposals.
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Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Synopses of solicitations and contracts.
1815.7003 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 63 FR 9954, Feb. 27, 1998, unless otherwise noted.

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals. (NASA supplements paragraphs (c) and (f))

(c)(6)(A) Except for acquisitions described in 1815.300–70(b), contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. If the DRFP contains Government-unique standards, potential offerors should be invited to identify voluntary consensus standards that meet the Government's requirements as alternatives to Government-unique standards cited as requirements, in accordance with FAR 11.101 and OMB Circular A–119. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(B) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(C) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(D) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(E) If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting officers shall use that information to establish a common set of performance-based payments parameters in the formal RFP when practicable.

(F) The procurement officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

(f)(i) Upon release of the formal RFP, the contracting officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the contracting officer or other authorized representative. This procedure is commonly known as a ''blackout notice'' and shall not be imposed before release of the RFP. The notice may be issued in any format

(e.g., letter or electronic) appropriate to the complexity of the acquisition.

(ii) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998; 65 FR 12484, Mar. 9, 2000; 65 FR 31102, May 16, 2000; 65 FR 37059, June 13, 2000]

1815.203 Requests for proposals.

1815.203–70 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting called a Solicitation Review Board (SRB) as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.370, the SEB shall review and approve the RFP prior to issuance.

1815.203–71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

[65 FR 12485, Mar. 9, 2000]

1815.203–72 Risk Management.

In all RFPs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

[65 FR 37059, June 13, 2000]

1815.204 Contract format.

1815.204–2 Part I—The Schedule. (NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.204–5 Part IV—Representations and instructions. (NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision.

1815.204–70 Page limitations.

(a) Technical and contracting personnel will agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½″ × 11″, with at least one inch margins on all sides, using not smaller than 12-point type. Foldouts count as an equivalent number of 8½″ × 11″ pages. The metric standard format most closely approximating the described standard 8½″ × 11″ size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of content, and cost/price information, shall not exceed 500 pages using the page definition of 1815.204–70(a). Firm page limitations shall also

be established for final proposal revisions, if requested. The appropriate page limitations for final proposal revisions should be determined by considering the complexity of the acquisition and the extent of any discussions. The same page limitations shall apply to all offerors. Pages submitted in excess of specified limitations will not be evaluated by the Government and will be returned to the offeror.

1815.207 Handling proposals and information.

1815.207–70 Release of proposal information.

(a) NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(b)(1) Except as provided in paragraph (b)(2) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. If outside evaluators are involved, this authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(2) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for the overall conduct of the evaluation. If outside evaluators are involved, the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(i) Proposals submitted in response to broad agency announcements such as Announcements of Opportunity and NASA Research Announcements;

(ii) Unsolicited proposals; and

(iii) SBIR and STTR proposals.

(3) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (b)(1) and (b)(2) of this section.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.207–71 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government evaluators, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a special Government employee is a separate action from the approval required by paragraph 1815.207–70(b) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The installation personnel office when the release of proposal information is to be made by the installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) Proposals submitted in response to broad agency announcements such as Announcements of Opportunity and NASA Research Announcements;

(2) Unsolicited proposals; and

(3) SBIR and STTR proposals.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.208 Submission, modification, revision, and withdrawal of proposals. (NASA supplements paragraph (b))

(b) The FAR late proposal criteria do not apply to Announcements of Opportunity (see 1872.705–1 paragraph VII), NASA Research Announcements (see 1852.235–72), and Small Business Innovative Research (SBIR) Phase I and Phase II solicitations, and Small Business Technology Transfer (STTR) solicitations. For these solicitations, proposals or proposal modifications received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in

cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the late submission, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering it. The selection official or a designee shall determine whether to consider the late submission.

1815.209 Solicitation provisions and contract clauses. (NASA supplements paragraph (a))

(a) The contracting officer shall insert FAR 52.215–1 in all competitive negotiated solicitations.

1815.209–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a prepoposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(b) The contracting officer shall insert the clause at 1852.214–71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(c) The contracting office shall insert the clause at 1852.214–72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(d) The contracting officer shall insert the provision at 1852.215–81, Proposal Page Limitations, in all competitive requests for proposals.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.

1815.300–70 Applicability of subpart.

(a)(1) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(i) Acquisitions of $50 million or more—in accordance with FAR 15.3 and this subpart.

(ii) Other acquisitions—in accordance with FAR 15.3 and this subpart except section 1815.370.

(2) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.3 and this subpart are not applicable to acquisitions conducted under the following procedures:

(1) MidRange (see part 1871).

(2) Announcements of Opportunity (see part 1872).

(3) NASA Research Announcements (see 1835.016–71).

(4) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(5) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

[63 FR 9954, Feb. 27, 1998, as amended at 64 FR 48561, Sept. 7, 1999]

1815.303 Responsibilities. (NASA supplements paragraphs (a) and (b))

(a) The SSA shall be established at the lowest reasonable level for each acquisition. Notwithstanding the FAR designation of the contracting officer as SSA, the SSA for center acquisitions shall be established in accordance with center procedures. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

(b)(i) The source selection authority (SSA) is the Agency official responsible for proper and efficient conduct of the

source selection process and for making the final source selection decision. The SSA has the following responsibilities in addition to those listed in the FAR:

(A) Approve the evaluation factors, subfactors, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104–2) before release of the RFP, or delegate this authority to appropriate management personnel;

(B) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(C) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(b)(2) Approval authorities for Acquisition Plans and Acquisition Strategy Meetings are in accordance with 1807.103.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998; 65 FR 30013, May 10, 2000]

1815.304 Evaluation factors and significant subfactors. (NASA supplements paragraph (c))

(c)(4)(A) The extent of participation of small disadvantaged business (SDB) concerns shall be evaluated as a subfactor under the Mission Suitability factor. If a Mission Suitability factor is not used, the SDB participation shall be evaluated as a separate factor or subfactor, as appropriate.

(B) SDB concerns that choose the FAR 19.11 price evaluation adjustment shall receive the lowest possible score/rating under the FAR 15.304(c)(4) evaluation.

[64 FR 25214, May 11, 1999]

1815.304–70 NASA evaluation factors.

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Past Performance. Evaluation factors may be further defined by subfactors. Evaluation subfactors should be structured to identify significant discriminators, or ''key swingers''—the essential information required to support a source selection decision. Too many subfactors undermine effective proposal evaluation. All evaluation subfactors should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to five. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Mission Suitability scores.

(4) If the solicitation requires the submission of a Safety and Health Plan (see 1823.7001(c) and NPG 8715.3, NASA Safety Manual, Appendix H), safety and health must be a consideration in the evaluation. For acquisitions valued at $10 million or more, or $25 million or more for commercial items, then the Mission Suitability factor, if used, shall include a subfactor for safety and health. Otherwise, use of that subfactor is optional.

(c) Cost/Price factor. This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs/prices. The Cost/Price factor is not numerically weighted or scored.

(d) Past Performance factor. (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content, and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems, and terminations.

(3) The contracting officer may start collecting past performance data before proposal receipt. One method for early evaluation of past performance is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

(4) The contracting officer shall evaluate the offeror's past performance in occupational health, security, safety, and mission success (*e.g.*, mishap rates and problems in delivered hardware and software that resulted in mishaps or failures) when these areas are germane to the requirement.

[63 FR 9954, Feb. 27, 1998, as amended at 64 FR 25215, May 11, 1999; 65 FR 30013, May 10, 2000; 65 FR 37059, June 13, 2000]

1815.305 Proposal evaluation. (NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any deficiencies;

(ii) All strengths and significant weaknesses;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactors and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The Past Performance evaluation factor; and

(vi) Any programmatic risk to mission success, *e.g.*, technical, schedule, cost, safety, occupational health, security, export control, or environmental. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, or as a result of the cost, schedule, and performance impacts associated with its approach. Risk evaluations must consider the probability of the risk occurring, the impact and severity of the risk, the timeframe when the risk should be addressed, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths, weaknesses, deficiencies, and numerical or adjectival ratings. Identified risks and the potential for cost impact shall be considered in the cost or price evaluation.

(a)(1) Cost or price evaluation.

(A) Cost or pricing data shall not be requested in competitive acquisitions. See 1815.403–1(b)(1) and 1815.403–3(b).

(B) When contracting on a basis other than firm-fixed-price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(a) The probable cost to the Government of each proposal, including any recommended additions or reductions

in materials, equipment, labor hours, direct rates, and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from that offeror's proposal.

(b) The differences in business methods, operating procedures, and practices as they affect cost.

(c) A level of confidence in the probable cost assessment for each proposal.

(C) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.305(a)(3)(B).

(a)(2) Past performance evaluation.

(A) The Past Performance evaluation assesses the contractor's performance under previously awarded contracts.

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) Questionnaires and interviews may be used to solicit assessments of the offerors's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(3) Technical Evaluation.

(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions, and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more significant strengths. No deficiency or significant weakness exists.	91–100
Very Good	A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist.	71–90
Good	A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not offset by strengths do not significantly detract from the offeror's response.	51–70
Fair	A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths.	31–50
Poor	A proposal that has one or more deficiencies or significant weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to correct.	0–30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(a) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty (i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(b) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(c) Affect a significant number of points to induce realistic pricing;

(d) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardware development	Point adjustment
±5 percent	±30 percent	0
±6 to 10 percent	±31 to 40 percent	−50
±11 to 15 percent	±41 to 50 percent	−100

Services	Hardware development	Point adjustment
±16 to 20 percent	±51 to 60 percent	−150
±21 to 30 percent	±61 to 70 percent	−200
±more than 30 percent	±more than 70 percent	−300

(a)(4) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998; 65 FR 37059, June 13, 2000]

1815.305–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major eficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.305–71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the SSA shall direct the contracting officer to:

(1) Award without discussions provided for contracting officer determines that adequate price competition exists (see FAR 15.403–1(c)(1)(ii));

(2) Award after negotiating an acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.403–1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.305–71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

1815.306 Exchanges with offerors after receipt of proposals. (NASA supplements paragraphs (c), (d), and (e))

(c)(2) A total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

(d)(3)(A) The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer shall question inadequate, conflicting, unrealistic, or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a ''bottom line'' is necessary.

(B) The contracting officer shall discuss contract terms and conditions so that a ''model'' contract can be sent to each offeror with the request for final proposal revisions. If the solicitation allows, any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's ''model'' contract. If the offeror declines to include these strengths in its ''model'' contract, the Government evaluators should reconsider their characterization as strengths.

(e)(1) In no case shall the contacting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other offerors an opportunity to propose against the relaxed requirements.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998]

1815.307 Proposal revisions. (NASA supplements paragraph (b))

(b)(i) The request for final proposal revisions (FPRs) shall also:

(A) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(B) Require offerors to complete and execute the ''model'' contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(C) Caution offerors against unsubstantiated changes to their proposals; and

(D) Establish a page limit for FPRs.

(ii) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of $50 million or more. Approval of the procurement officer is required for all other acquisitions.

(iii) Proposals are rescored based on FPR evaluations. Scoring changes between initial and FPRs shall be clearly traceable.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44409, Aug. 19, 1998]

1815.308 Source selection decision. (NASA paragraphs (1), (2) and (3))

(1) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(2) Before aware, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: the acquisition; the evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions (see 1815.506–70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in postaward debriefings of unsuccessful offerors and shall be provided to debriefed offerors upon request.

(3) Once the selection decision is made, the contracting officer shall award the contract.

1815.370 NASA source evaluation boards.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.300–700(a)(1)(i).

(b) The SEB assists the SSA by providing expert analyses of the offerors' proposals in relation to the evaluation factors and subfactors contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) *Designation.* (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan or acquisition strategy meeting approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with 1815.207–70.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) *Organization.* (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and factfinding without the use of committees or panels/consultants (as described in paragraphs (d)(4) and (5) of this section) to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a factfinding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors and subfactors and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a factfinding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 20, unless approved in writing by the procurement officer.

(e) *Voting members.* (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of an SEB.

(3) The SEB shall review the findings of committees, panels, or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) *Ex officio members.* (1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph (f)(3) of this section is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) *Evaluation.* (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths, deficiencies, or significant weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) The SEB process must be adequately documented. Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment. SEB minutes shall reflect this evaluation process.

(h) *SEB presentation.* (1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors and subfactors; the significant strengths and significant weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, weights, or

scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the center director and to the Official-in-Charge of the cognizant Headquarters Program Office.

(i) *Recommended SEB presentation format.* (1) *Identification of the acquisition.* Identifies the installation, the nature of the services or hardware to be acquired, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background.* Identifies any earlier phases of a phased acquisition or, as in the case of continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, and subfactors.* Explains the evaluation factors, subfactors, and any special standards of responsibility. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Past Performance evaluations.

(4) *Sources.* Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings.* Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed cost/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Significant strengths, deficiencies, and significant weaknesses of offerors.* Summarizes the SEB's findings, using the following guidelines:

(i) Present only the significant strengths, deficiencies, and significant weaknesses of individual offerors.

(ii) Directly relate the significant strengths, deficiencies, and significant weaknesses to the evaluation factors and subfactors.

(iii) Indicate the results and impact, if any, of discussions and FPRs on ratings and scores.

(7) *Final Mission Suitability Ratings and Scores.* Summarizes the evaluation subfactors, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation.* Summarizes proposed cost/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Past performance.* Reflects the summary conclusions, supported by specific case data.

(10) *Special interest.* Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could affect the selection decision.

(j) A source selection statement shall be prepared in accordance with 1815.308. For installation selections, the installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44409, Aug. 19, 1998; 65 FR 30013, May 10, 2000; 65 FR 38777, June 22, 2000]

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403–1 Prohibition on obtaining cost or pricing data. (NASA supplements paragraphs (b) and (c))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception.

(c)(4) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HK).

1815.403–170 Waivers of cost or pricing data.

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

[64 FR 10573, Mar. 5, 1999]

1815.403–3 Requiring information other than cost or pricing data.

(b) As indicated in 1815.403–1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed price competitions, only the minimum information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed price competitions, the contracting officer shall not request any cost information, except as required by FAR 22.1103, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

[64 FR 69416, Dec. 13, 1999]

1815.403–4 Requiring cost or pricing data. (NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of that agreement.

1815.404 Proposal analysis.

1815.404–2 Information to support proposal analysis. (NASA supplements paragraph (a))

(a)(1)(A) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(B) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(C) When the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

(D) Requests for field pricing assistance may be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.

1815.404–4 Profit. (NASA supplements paragraphs (b) and (c))

(b)(1)(i)(*a*) The NASA structured approach for determining profit or fee objectives, described in 1815.404–471 shall be used to determine profit or fee objectives in the negotiation of contracts greater than or equal to $100,000 that use cost analysis and are:

(*1*) Awarded on the basis of other than full and open competition (see FAR 6.3);

(*2*) Awarded under NASA Research Announcements (NRAs) and Announcements of Opportunity (AO's); or

(3) Awarded under the Small Business Innovative Research (SBIR) or the Small Business Technology Transfer Research (STTR) programs.

(b) The rate calculated for the basic contract may only be used on actions under a negotiated contract when the conditions affecting profit or fee do not change.

(c) Although specific agreement on the applied weights or values for individual profit or fee factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the structured approach format or similar structured approach; and

(2) Use the structured approach method in developing profit or fee objectives for negotiated subcontracts.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of materials supplied by subcontractors;

(e) Termination settlements; and

(f) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

(c)(2) Contracting officers shall document the profit or fee analysis in the contract file.

[64 FR 51472, Sept. 23, 1999]

1815.404–470 NASA Form 634.

NASA Form (NF) 634 shall be used in performing the analysis necessary to develop profit or fee objectives.

[64 FR 51473, Sept. 23, 1999]

1815.404–471 NASA structured approach for profit or fee objective.

1815.404–471–1 General.

(a) The structured approach for determining profit or fee objectives (NF 634) focuses on three profit factors:

(1) Performance risk;

(2) Contract type risk including working capital adjustment; and

(3) Other Considerations which may be considered by the contracting officer to account for special circumstances that are not adequately addressed in the performance risk and contract type risk factors.

(b) The contracting officer assigns values to each profit or fee factor; the value multiplied by the base results in the profit/fee objective for that factor. Each factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by NASA. The designated range provides values based on above normal or below normal conditions. Values outside the designated range must not be used. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but must address conditions that justify assignment of other than the normal value.

[64 FR 51473, Sept. 23, 1999, as amended at 65 FR 12485, Mar. 9, 2000]

1815.404–471–2 Performance risk.

(a) *Risk factors.* Performance risk addresses the contractor's degree of risk in fulfilling the contract requirements. It consists of three risk factors:

(1) Technical—the technical uncertainties of performance;

(2) Management—the degree of management effort necessary to ensure that contract requirements are met; and

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Risk factor weighting, values and calculations.* A weighting and value is assigned to each of the risk factors to determine a profit/fee objective.

(c) *Values.* The normal value is 6 percent and the designated range is 4 percent to 8 percent.

(d) *Evaluation criteria for technical risk factor.* (1) In determining the appropriate value for the technical risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall consider the—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions indicating substantial technical risk.* (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk, such as when—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(D) The services or analytical efforts are extremely important to the government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet the Government's requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) The contracting officer may assign a value significantly above normal. A maximum value may be assigned when the effort involves—

(A) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials;

(B) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(C) A high degree of development or production concurrency.

(3) *Below normal conditions indicating lower than normal technical risk.* (i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low, such as when the—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be justified when the effort involves—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management risk factor.* (1) In determining the appropriate value for the management risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by contract administration offices;

(ii) Assess the management involvement expected on the prospective contract action; and

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value added by the contractor.

(2) *Above normal conditions indicating substantial management risk.* (i) The contracting officer may assign a higher than normal value when the management effort is intense, such as when—

(A) The contractor's value added is both considerable and reasonably difficult; or

(B) The effort involves a high degree of integration and coordination.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large-scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination; or

(C) Has critically important milestones.

(3) *Below normal conditions indicating lower than normal management risk.* (i) The contracting officer may assign a lower than normal value when the management effort is minimal, such as when—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor fails to provide an adequate analysis of subcontractor costs; or

(E) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be assigned when—

(A) Reviews performed by the field administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control risk factor.* (1) In determining the appropriate value for the cost control risk factor, the contracting officer shall—

(i) Evaluate the expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) Evaluate the contractor's cost reduction initiatives (e.g., competition advocacy programs);

(iii) Assess the adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Evaluate any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) *Above normal conditions indicating substantial cost control risk.* (i) The contracting officer may assign a value higher than normal value if the contractor can demonstrate a highly effective cost control program, such as when—

(A) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(B) The contractor uses a high degree of subcontract competition; or

(C) The contractor has a proven record of cost tracking and control.

(3) *Below normal conditions indicating lower than normal cost control risk.* (i) The contracting officer may assign a lower than normal value in those cases where the contractor demonstrates minimal concern for cost control, such as when—

(A) The contractor's cost estimating system is marginal;

(B) The contractor has made minimal effort to initiate cost reduction programs;

(C) The contractor's cost proposal is inadequate; or

(D) The contractor has a record of cost overruns or the indication of unreliable cost estimates and lack of cost control.

[64 FR 51473, Sept. 23, 1999]

1815.404–471–3 Contract type risk and working capital adjustment.

(a) *Risk factors.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It applies to fixed-price type contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's

cost of working capital under varying contract circumstances, financing policies, and the economic environment. This adjustment is limited to a maximum of 2 percent.

(b) *Risk factor values and calculations.* A risk value is assigned to calculate the profit or fee objective for contract type. A contract length factor is assigned and applied to costs financed when a working capital adjustment is appropriate. This calculation is only performed when the prospective contract is a fixed-price contract containing provisions for progress payments.

(c) *Values: Normal and designated ranges.*

Contract Type	Note	Normal value (Percent)	Designated range (Percent)
Firm-fixed-price, no financing	(1)	5	4 to 6
Firm-fixed-price with performance-based payments	(6)	4	2.5 to 5.5
Firm-fixed-price with progress payments	(2)	3	2 to 4
Fixed-price-incentive, no financing	(1)	3	2 to 4
Fixed-price-incentive, with performance-based payments	(6)	2	.5 to 3.5
Fixed-price, redeterminable	(3)		
Fixed-price-incentive, with progress payments	(2)	1	0 to 2
Cost-plus-incentive-fee	(4)	1	0 to 2
Cost-plus-award fee	(4)	.75	.5 to 1.5
Cost-plus-fixed fee	(4)	.5	0 to 1
Time-and-materials	(5)	.5	0 to 1
Labor-hour	(5)	.5	0 to 1
Firm-fixed-price, level-of-effort, term	(5)	.5	0 to 1

(1) *No financing,* means that the contract either does not provide progress or performance based payments, or provides them only on a limited basis. Do not compute a working capital adjustment.

(2) When progress payments are present, compute a working capital adjustment.

(3) For purposes of assigning profit values, treat a fixed-price redeterminable contract as if it were a fixed-price-incentive contract with below normal provisions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. Do not compute the working capital adjustment. However, higher than normal values may be assigned within the designated range to the extent that portions of cost are fixed.

(6) When performance-based payments are used, do not compute a working capital adjustment.

(d) *Evaluation criteria.* (1) *General.* The contracting officer shall consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost projection data;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in the incentive provisions; and

(vii) The rate, frequency, and risk to the contractor of performance-based payments, if provided.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Conditions indicating higher than normal contract type risk are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions that place a high degree of risk on the contractor;

(iv) Performance-based payments totaling less than the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Conditions indicating lower than normal contract type risk are:

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk, e.g. economic price adjustment provisions; and

(iv) Incentive provisions that place a low amount of risk on the contractor.

(v) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.* (1) Costs financed equal the total costs multiplied by the percent of costs financed by the contractor.

(2) Total costs may be reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments are liquidated late in the period of performance);

(ii) Some costs are covered by special funding arrangements, such as advance payments;

(3) The portion financed by the contractor is generally the portion not covered by progress payments. (i.e.—for progress payments: 100 percent minus the customary progress payments rate. For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide progress payments to small business, use the customary progress payment rate for large businesses.)

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery, as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions when calculating the objective for the base period; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial year's requirements.

(2) The contracting officer—

(i) Should use the following to select the contract length factor:

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 or more	1.40

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

[64 FR 51474, Sept. 23, 1999]

1815.404–471–4 Other considerations.

(a) Other Considerations may be included by the contracting officer to account for special circumstances, such as contractor efficiencies or unusual acceptance of contractual or program risks that are not adequately addressed in the structured approach calculations described in 1815.404–471–2 or 1815.404–4713. The total adjustment resulting from Other Considerations may be positive or negative but in no case should the total adjustment exceed +/−5 percent.

(b) The contracting officer shall analyze and verify information provided by

the contractor that demonstrates that the special circumstances being recognized under this section—

(1) Provide substantial benefits to the Government under the contract and/or overall program;

(2) Have not been recognized in the structured approach calculations; and

(3) Represent unusual and innovative actions or acceptance of risk by the contractor.

(c) Examples of special circumstances include, but are not limited to the following:

(1) Consistent demonstration by the contractor of excellent past performance within the last three years, with a special emphasis on excellence in safety, may merit an upward adjustment of as much as 1 percent. Similarly, an assessment of poor past performance, especially in the area of safety, may merit a downward adjustment of as much -1 percent. This consideration is especially important when negotiating modifications or changes to an ongoing contract.

(2) Extraordinary steps to achieve the Government's socioeconomic goals, environmental goals, and public policy goals established by law or regulation that are sufficiently unique or unusual may merit an upward adjustment of as much as .5 percent. Similarly, for nonparticipation in or violation of Federal programs, the contracting officer may adjust the objective by as much as -.5 percent. However, this consideration does not apply to the utilization of small disadvantaged businesses. Incentives for use of these firms may only be structured according to FAR 19.1203 and 19.1204(c).

(3) Consideration of up to 1 percent should be given when contract performance requires the expenditure of significant corporate capital resources.

(4) Unusual requests for use of government facilities and property may merit a downward adjustment of as much as—1 percent.

(5) Cost efficiencies arising from innovative product design, process improvements, or integration of a life cycle cost approach for the design and development of systems that minimize maintenance and operations costs, that have not been recognized in Performance Risk or Contract Type Risk, may merit an upward adjustment. This factor is intended to recognize and reward improvements resulting from better ideas and management that will benefit the Government in the contract and/or program.

(d) Other considerations need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when there is a significant expectation of near-term spin-off benefits as a direct result of the contract.

[64 FR 51475, Sept. 23, 1999]

1815.404–471–5 Facilities capital cost of money.

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2) or 1 percent of the cost base, whichever is less.

(b) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

[64 FR 51476, Sept. 23, 1999]

1815.404–471–6 Modification to structured profit/fee approach for nonprofit organizations.

(a) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach must be used as a basis for arriving at profit/fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (b) of this section. It is NASA policy not to pay profit or fee on contracts with educational institutions.

(b) For contracts with nonprofit organizations under which profit or fee is involved, an adjustment of up to 3 percent of the costs in Block 13 of NASA Form 634 must be subtracted from the total profit/fee objective. In developing

this adjustment, it is necessary to consider the following factors:

(1) Tax position benefits;

(2) Granting of financing through letters of credit;

(3) Facility requirements of the nonprofit organization; and

(4) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

[65 FR 45306, July 21, 2000]

1815.404–472 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

[65 FR 12485, Mar. 9, 2000]

1815.406 Documentation.

1815.406–1 Prenegotiation objectives. (NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of FAR 15.3 and 1815.3.

1815.406–170 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.406–3 and 1815.406–3). In addition to the information described in FAR 15.406–1 and, as appropriate, 15.406–3(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) Introduction. Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.406–3(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) Type of contract contemplated. Explain the type of contract contemplated and the reasons for its suitability.

(c) Special features and requirements. In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government);

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required; and

(7) Any risk management issues, *e.g.*, mission success, safety, occupational health, information technology, export control, security, and environmental risks.

(d) Cost analysis. For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how

historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.404–3(c), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, any unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD Form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, and cost risk.

(e) Negotiation approval sought. The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

[63 FR 9954, Feb. 27, 1998, as amended at 65 FR 37059, June 13, 2000]

1815.406–171 Installation reviews.

Each contracting activity shall establish procedures to review all prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.406–172 Headquarters reviews.

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluations, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

1815.406–3 Documenting the negotiation. (NASA supplements paragraph (a))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.406–3 shall be reflected in the evaluation and selection documentation to the extent applicable.

(iii) When the PNM is a ''stand-alone'' document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.406–1, the subsequent PNM need only provide any information required by FAR 15.406–3 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, or subcontractors; wage

rate determinations; or the current status of the contractor's systems).

1815.407 Special cost or pricing areas.

1815.407–2 Make-or-buy programs. (NASA supplements paragraph (e))

(e)(1) Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.408 Solicitation provisions and contract clauses.

1815.408–70 NASA solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.407–2(c). This provision shall be used in conjunction with the clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for ''Make-or-Buy'' Changes, in contracts that include FAR 52.215–9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed.

1815.506 Postaward debriefing of offerors.

1815.506–70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy. (NASA paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.604 Agency points of contact. (NASA supplements paragraph (a))

(a) Information titled ''Guidance for the Preparation and Submission of Unsolicited Proposals'' is available on the Internet at http://ec.msfc.nasa.gov/

msfc/nasahdbk.html. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44409, Aug. 19, 1998]

1815.606 Agency procedures. (NASA supplements paragraphs (a) and (b))

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of contact to the proper installation. Points of contact are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

1815.606–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–71), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

[63 FR 9954, Feb. 27, 1998, as amended at 64 FR 48561, Sept. 7, 1999]

1815.609 Limited use of data.

1815.609–70 Limited use of proposals.

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207–70.

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.

[64 FR 36606, July 7, 1999]

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.

[65 FR 38777, June 22, 2000]

PART 1816—TYPES OF CONTRACTS

Subpart 1816.1—Selecting Contract Types

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Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.
1816.505 Ordering.
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Subpart 1816.6—Time-and-Materials, Labor-House, and Letter Contracts

1816.603 Letter contracts.
1816.603–370 Approvals.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 3478, Jan. 23, 1997, unless otherwise noted.

Subpart 1816.1—Selecting Contract Types

SOURCE: 63 FR 12997, Mar. 17, 1998, unless otherwise noted.

1816.104 Factors in selecting contract types.

1816.104–70 Contract type for performance-based contracting (PBC).

(a) PBC is defined in FAR 37.101 and discussed in FAR 37.6. Although FAR part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBC specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A level-of-effort contract is not PBC.

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses. (NASA supplements paragraphs (a) and (d)).

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2 through 52.216–4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph

(c)(1) of the clauses at FAR 52.216–2 through 52.216–4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HK, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Associate Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

[62 FR 3478, Jan. 23, 1997, as amended at 64 FR 5620, Feb. 4, 1999]

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.306 Cost-plus-fixed-fee contracts. (NASA supplements paragraph (d)).

(d) *Completion and term forms.*

(4) Term form contracts are incompatible with performance base contracting (PBC) and should not be used with PBC requirements.

1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

(b) In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that

a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303–70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216–81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216–7, Allowable Cost and Payment, or FAR clause 52.216–13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

Subpart 1816.4—Incentive Contracts

1816.402 Application of predetermined, formula-type incentives. (NASA paragraphs 1, 2 and 3).

When considering the use of a quality, performance, or schedule incentive, the following guidance applies.

(1) A positive incentive is generally not appropriate unless—

(i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;

(ii) The value of the higher level of performance is worth the additional cost/fee;

(iii) The attainment of the higher level of performance is clearly within the control of the contractor; and

(iv) An upper limit is identified, beyond which no further incentive is earned.

(2) A negative incentive is generally not appropriate unless—

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

[63 FR 12997, Mar. 17, 1998]

1816.402–2 Performance incentives.

1816.402–270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than $25 million. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under $25 million acquired under procedures other than FAR Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both

positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g. multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules.

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404–4(c)(4)(i).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

[62 FR 3478, Jan. 23, 1997, as amended at 62 FR 58687, Oct. 30, 1997; 63 FR 9965, Feb. 27, 1998; 63 FR 12997, Mar. 17, 1998; 63 FR 28285, May 22, 1998]

1816.404 Fixed-price contracts with award fees.

Section 1816.405–2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405–271) nor evaluation of cost control (see 1816.405–274) apply to FPAF contracts.

[62 FR 58687, Oct. 30, 1997]

1816.405 Cost-reimbursement incentive contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–2 Cost-plus-award-fee (CPAF) contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–270 CPAF contracts.

(a) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than $2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

[63 FR 12998, Mar. 17, 1998]

1816.405–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is ''satisfactory'' or better. (See 1816.405–273 and 1816.405–275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is ''poor/unsatisfactory'', all provisional base fee payments shall be refunded to the Government.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, July 9, 1997; 63 FR 13133, Mar. 18, 1998]

1816.405–272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to

each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997, as amended at 63 FR 13133, Mar. 18, 1998]

1816.405–273 Award fee evaluations.

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or ''rolled-over,'' into subsequent periods.

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as ''Source Selection Information—See FAR 3.104''.

[63 FR 13133, Mar. 18, 1998]

1816.405–274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors. Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor, if used, must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405–273(a), an overall fee determination of zero for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405–273(b), an overall fee determination of zero for any interim evaluation period in which there is a major breach of safety or security.

To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if a zero fee determination was made because of a major breach of safety or security.

(2) A major breach of safety consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater (see 1816.405–275). An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.405–274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, and women-owned small business concerns.

(2) The contractor's performance against the contract target for participation as subcontractors by small disadvantaged business concerns in the SIC Major Groups designated by the Department of Commerce (see FAR 19.201(c)) shall also be evaluated if the

clause at FAR 52.219–26, Small Disadvantaged Business Participation—Incentive Subcontracting, is not included in the contract (see FAR 19.1204(c)).

(3) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protege Program, if applicable, may also be evaluated.

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, and women-owned small business concerns, and with small disadvantaged business concerns in designated SIC Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(i) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 63 FR 12998, Mar. 17, 1998; 64 FR 25215, May 11, 1999; 65 FR 37059, June 13, 2000; 65 FR 46628, July 31, 2000]

1816.405–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) *Excellent* (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) *Very good* (90–81): Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) *Good* (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) *Satisfactory* (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) *Poor/Unsatisfactory* (less than 61): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated ''Excellent,'' the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0–100 according to the ratings defined in 1816.405–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 63 FR 13134, Mar. 18, 1998]

1816.405–276 Award fee payments and limitations.

(a) *Interim award fee payments.* The amount of an interim award fee payment (see 1816.405–273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional award fee payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

[63 FR 13134, Mar. 18, 1998]

1816.406 Contract clauses.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.406–70 NASA contract clauses.

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost an award fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402–270, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 62 FR 58687, Oct. 30, 1997; 63 FR 13134, Mar. 18, 1998]

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts. (NASA supplements paragraph (a))

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

(a)(4)(v) See 1815.7003.

[62 FR 3478, Jan. 23, 1997, as amended at 65 FR 38777, June 22, 2000]

1816.505 Ordering. (NASA supplements paragraphs (a) and (b))

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.

[62 FR 3478, Jan. 23, 1997, as amended at 64 FR 51079, Sept. 21, 1999; 65 FR 38777, June 22, 2000; 65 FR 46628, July 31, 2000]

1816.505–70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104–70(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216–80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843–70.

[62 FR 3478, Jan. 23, 1997, as amended at 65 FR 46628, July 31, 2000]

1816.506–70 NASA contract clause.

Insert the clause at 1852.216–80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NPG 9501.2, NASA Contractor Financial Management Reporting System), use the clause with its Alternate I.

[62 FR 3478, Jan. 23, 1997, as amended at 64 FR 51079, Sept. 21, 1999]

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603–370 Approvals.

(a) All requests for authority to issue a letter contract shall include the following:

(1) Proposed contractor's name and address.

(2) Location where contract is to be performed.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed.

(10) A statement that the definitive contract will contain all required clauses or identification of specific clause deviations that have been approved.

(11) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(12) The definitization schedule described in FAR 16.603–2(c) expected to be negotiated with the contractor.

(b) Requests for authority to issue letter contracts having an estimated definitive contract amount equal to or greater than the Master Buy Plan submission thresholds of 1807.7101 (or modifications thereto) shall be signed by the procurement officer and submitted to the Associate Administrator

for Procurement (Code HS) for approval.

(c) Authority to approve the issuance of letter contracts below the Master Buy Plan submission thresholds specified in 1807.7101 is delegated to the procurement officer.

(d) Any modification of an undefinitized letter contract approved by a procurement officer in accordance with paragraph (c) of this section that increases the estimated definitized contract amount to or above the Master Buy Plan submission thresholds must have the prior approval of the Associate Administrator for Procurement (Code HS).

PART 1817—SPECIAL CONTRACTING METHODS

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AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 55753, Oct. 29, 1996, unless otherwise noted.

Subpart 1817.1—Multiyear Contracting

1817.105 Policy.

1817.105–1 Uses. (NASA supplements paragraph (b))

(b) The Associate Administrator for Procurement (Code HS) is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105–1(b) (1) through (5) is met by the proposed use of multiyear contracting.

Subpart 1817.2—Options

1817.200 Scope of subpart.

FAR subpart 17.2 applies to all NASA contracts.

1817.203 Solicitations. (NASA supplements paragraph (g))

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

1817.204 Contracts. (NASA supplements paragraph (e))

(e)(i) The 5-year limitation (basic plus option periods) does not apply

when the time needed to complete system development or hardware production is greater than five years.

(ii) Requests for deviations from the 5-year limitation policy shall be sent to the Associate Administrator for Procurement (Code HS) and shall include justification for exceeding five years and evidence that the extended years can be reasonably priced.

1817.206 Evaluation. (NASA supplements paragraph (b))

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under 1817.206(b)(i), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.

1817.207 Exercise of options. (NASA supplements paragraph (f))

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Associate Administrator for Procurement (Code HS).

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Associate Administrator for Procurement (Code HS). The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

1817.208 Solicitation provisions and contract clauses. (NASA supplements paragraph (c))

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217–5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.503 Determinations and findings requirements. (NASA supplements paragraph (a))

(a) See 1817.72 for additional information on interagency transaction requirements.

(2) Current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

[61 FR 55753, Oct. 29, 1996, as amended at 62 FR 58687, Oct. 30, 1997; 63 FR 9967, Feb. 27, 1998]

1817.504 Ordering procedures. (NASA supplements paragraph (b))

(b)(4) All payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient. The rationale for a longer period shall be documented in the contract file.

Subpart 1817.70—Acquisitions With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, for acquisition of supplies or services by NASA from or through the Military Departments.

1817.7001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the acquisition services, personnel, equipment, and facilities of the Military Departments, with their consent and with or without reimbursement, and, on a similar basis, to cooperate with the Military Departments in the use of acquisition services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

[61 FR 55753, Oct. 29, 1996, as amended at 62 FR 58687, Oct. 30, 1997]

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting acquisition of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with subpart 1804.71. The form shall not be used for requesting—

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house service, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) The contracting officer shall include a provision in the order in accordance with 1817.504(b)(4).

(c) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002–72.

1817.7002–1 Acceptance by Military Department.

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448–2. Each DD Form 448–2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

1817.7002–2 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 7, NASA Form 523) of the items

to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the cognizant NASA contracting office shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

1817.7002–3 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments shall be made by that NASA office designated in block 9 of the NASA-Defense Purchase Request upon receipt of Standard Form 1080. Billings will be supported in the same manner as billings between Military Departments.

1817.7002–4 Contract clause.

The contracting officer shall insert the clause at 1852.217–70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from the sale to the acquisition of similar property for replacement purposes. The transaction must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NHB 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101–46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

Subpart 1817.72—Interagency Transactions

1817.7201 Policy.

(a) Although the Space Act provides interagency transaction authority nearly equivalent to the Economy Act, NASA has elected to conform its implementation of the Space Act to the requirements of the Economy Act. Therefore, unless exempt from the Economy Act for reasons other than the general authority of the Space Act, interagency acquisitions shall be supported by a Determination and Findings equivalent to that required for Economy Act transactions (see FAR 17.503 and 1817.503). This requirement applies to all purchases of goods or services under contracts entered into or administered by the Military Departments or other agencies. The Space Act may be cited as authority for a transaction where appropriate, but that does not provide relief from this D&F requirement.

(b) The determination described in paragraph (a) of this section is not required for contracts awarded under the Space Act to Government agencies pursuant to a Broad Agency Announcement when a review of the acquisition records would make it obvious that the award is nor being used as a method of circumventing regulatory or statutory requirements, particularly FAR part 6, Competition Requirements (e.g., when a significant number and value of awards made under the BAA are made to entities other than Government agencies).

[62 FR 58687, Oct. 30, 1997]

Subpart 1817.73—Phased Acquisition

SOURCE: 63 FR 56091, Oct. 21, 1998, unless otherwise noted.

1817.7300 Definitions.

(a) *Down-selection*. In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition*. An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) *Progressive Competition*. A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7301 Down-selections in phased acquisitions.

1817.7301–1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the initial phase solicitation will also lead to subsequent phase award(s), the decision to use a down-selection strategy must be made prior to release of the initial solicitation. Accordingly, all phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in a subsequent phase, down-selection is inappropriate. In this case, the phases should be contracted for separately without a down-selection.

(c) With one exception, both the initial and subsequent phase(s) of an acquisition down-selection process are considered to be full and open competition if the procedures in 1817.7301–4 and 1817.7301–5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205 and 1804.570–2.

1817.7301–2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that a preceding phase contractor will be the subsequent phase contractor, the evaluation factors for initial phase award must specifically include evaluation of the offerors' abilities to perform all phases.

1817.7301–3 Down-selection milestones.

(a) When sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. These activities should commence as early as practicable. The initial phase contracts should be structured to allow for down-selection at a discrete performance milestone (e.g., a significant design review or at contract completion) of a design maturity sufficient to allow for an informed selection decision. This will avoid time gaps between phases and eliminate unnecessary duplication of effort.

(b) The appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if a two-phased acquisition strategy calls for formal completion of initial phase effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for subsequent phase award and performance to carry all initial phase contractors through PDR, the initial phase contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the

down-selection winner, and the subsequent phase performance begun at the completion of the PDR option.

1817.7301–4 Synopsis.

(a) Each phase of a phased acquisition not performed in-house must be synopsized in accordance with FAR 5.201 and must include all the information required by FAR 5.207. Time gaps between phases should be minimized by early synopsis of subsequent phase competition. The synopsis for the initial competitive phase should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved.)

(2) Competitions for identified subsequent phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a ''progressive competition'' (see 1817.7301–5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsized in accordance with FAR 5.201 and 5.203.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phase(s) must identify the current phase contractors.

1817.7301–5 Progressive competition.

(a) To streamline the acquisition process, the preferred approach for NASA phased acquisitions is the ''progressive competition'' down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offeror must be advised of all requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(c) A key feature of the progressive competition technique is that a formal solicitation is normally not required. However, when the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is no longer valid, a new solicitation shall be issued for the next phase.

(d) Subsequent phase proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that the late proposal information in paragraph (c)(3) of FAR 52.215–1, Instructions to Offerors—Competitive Acquisition, applies to the due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the initial solicitation.

(5) All required clause changes applicable to new work effective since the preceding phase award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the preceding phase contractors, it is also likely that a new, formal solicitation is necessary for the subsequent phase and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1817.7302 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.217–71, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1817.7301–5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.217–72, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1817.7301–5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1819—SMALL BUSINESS PROGRAMS

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36707, July 9, 1997, unless otherwise noted.

1819.001 Definitions.

High-Tech as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

Subpart 1819.2—Policies

1819.201 General policy. (NASA supplements paragraphs (a), (c), (d), and (f))

(a)(i) NASA is committed to providing to small, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) NASA annually negotiates Agency small, HUBZone, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has the following statutory goals based on the total value of prime and subcontract awards:

(A) Under Public Laws 101–144, 101–507, and 102–389, an annual goal of at least 8 percent for prime and subcontract awards to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small businesses (WOSBs) (see 1819.7000); and

(B) Under 10 U.S.C. 2323, an annual goal of 5 percent for prime and subcontract awards to SDBs, HBCUs, and WOSBs.

(c) The Associate Administrator for Small and Disadvantaged Business Utilization (Code K) is the Agency official responsible for carrying out the duties in FAR 19.201(c).

(d)(i) The center director shall designate a qualified individual in the contracting office as a small business specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in NASA acquisitions. The small business specialist shall also perform other functions specifically set forth in this section 1819.201 or that the procurement officer may prescribe, with the concurrence of the Associate Administrator for Small and Disadvantaged Business Utilization, for implementing the Small Business Program. When the center director considers that the volume of acquisitions or the functions relating to acquisitions at the center do not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(ii) Small business specialists appointed under paragraph (d)(i) of this subsection shall perform the following duties, as the procurement officer determines appropriate to the installation:

(A) Maintain a program designed to locate capable small business sources, including those located in labor surplus areas, for current and future acquisitions.

(B) Coordinate inquiries and requests for advice from small business concerns on acquisition matters.

(C) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including making recommendations for initiation of set-asides (see FAR 19.5 and 19.8) and for taking action in accordance with FAR 19.506(b) and 1819.502–70. Participate and provide input early in the acquisition planning phase of proposed acquisitions, including acquisition strategy meetings.

(D) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, work with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for current or future acquisitions will be available.

(E) Review acquisitions for possible breakout of items suitable for acquisition from small business concerns.

(F) Advise small business concerns regarding financial assistance available under laws and regulations, assist such concerns in applying for such assistance, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(G) Participate in responsibility determinations (see FAR 9.103) when small business concerns are involved.

(H) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705–4).

(I) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(J) Ensure that participation of small business concerns is accurately reported.

(K) Make available to SBA copies of solicitations when requested.

(L) Act as liaison between contracting officers and SBA area offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved.

(M) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(N) When a small business concern's offer has been rejected for nonresponsiveness or nonresponsibility, assist that concern, upon its request, in understanding such requirements for future awards.

(O) Advise center personnel, as necessary, on new Governmentwide and Agency-approved small business programs and initiatives.

(f)(1) The NASA Ombudsman, the Director of the Contract Management Division (Code HK), is the designated official for determining whether the use of the SDB mechanism in FAR subpart 19.11 has resulted in an undue burden on non-SDB firms in the Department of Commerce designated SIC Major Groups, or is otherwise inappropriate.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999; 65 FR 38777, June 22, 2000]

1819.202 Specific policies.

1819.202–1 Encouraging small business participation in acquisitions.

Subpart 1819.3—Determination of Status as a Small Business, HUBZone Small Business, or Small Disadvantaged Business Concern

1819.302 Protesting a small business representation. (NASA supplements paragraph (d))

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

Subpart 1819.5—Set-Asides for Small Business

1819.502 Setting aside acquisitions.

1819.502–70 Non-initiation of set-asides.

(a) All cases involving the non-initiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a decision by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review.

(b) If the small business specialist recommends that an individual acquisition or a class of acquisition, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) When an SBA representative is assigned and available and the contracting officer disapproves the small business specialist's recommendation, the contracting officer shall promptly

refer the case to the SBA representative for review. The small business specialist shall take no further appeal action. The SBA representative must either concur with the decision or appeal the case to the procurement officer under FAR 19.505. If the procurement officer approves the contracting officer's decision and the SBA appeals under FAR 19.505(c), the procurement officer shall forward the required written justification, including a history of discussions between the center and the SBA and rationale for the decision, to the Headquarters Office of Procurement (HS).

(d) When an SBA representative is not assigned or available and the contracting officer disapproves the small business specialist's recommendation, the small business specialist may appeal in writing to the procurement officer. The procurement officer's decision shall be final. The contracting officer shall place a memorandum of the procurement officer's decision in the contract file. If the procurement officer's decision approves the contracting officer's action, the small business specialist shall forward complete documentation of the case to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

(e) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of nonconcurrence in a recommended set-aside action.

§ 1819.502–3 Partial set-asides.

§ 1819.502–370 NASA reporting requirements.

The contracting officer shall separately report, in accordance with Subpart 1804.6, awards of the non-set-aside portions of small business set-aside acquisitions.

1819.505 Rejecting Small Business Administration recommendations.

See 1819.502–70.

1819.506 Withdrawing or modifying small business set-asides. (NASA supplements paragraph (b))

(b) If an SBA representative is not assigned or available, and the small business specialist disagrees with the contracting officer's written decision of withdrawal or modification of a set-aside determination, the small business specialist may appeal to the procurement officer in accordance with the procedures in 1819.502–70(d).

Subpart 1819.6—Certificates of Competency and Determinations of Responsibility

1819.602 Procedures.

1819.602–1 Referral. (NASA supplements paragraph (a))

(a) On proposed awards exceeding the simplified acquisition threshold, the contracting officer should consider requesting a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible. The scope of the preaward survey request should be limited to those elements of responsibility that are questioned.

(2) The contracting officer shall forward a copy of the referral to SBA through the procurement officer to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

1819.602–3 Resolving differences between the agency and the Small Business Administration.

1819.602–370 NASA procedures.

(a) When agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall forward to the Headquarters Office of Procurement (Code HS) on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a COC, and the contracting officer's comments. The contracting officer shall suspend acquisition action until informed by Code HS of the final decision in the case.

(b) If the Office of Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a COC, Code HS shall inform the contracting officer.

(c) If the Office of Procurement agrees with the contracting officer's

recommended appeal action, the Associate Administrator for Procurement shall forward the appeal through the Office of Small and Disadvantaged Business Utilization (Code K) to SBA Headquarters.

Subpart 1819.7—The Small Business Subcontracting Program

1819.705–2 Determining the need for a subcontracting plan. (NASA supplements paragraph (d))

(d) Solicitations for competitive negotiated acquisitions shall require proposed subcontracting plans with initial proposals (see 1819.708(b)(1)). For sole source negotiated acquisitions, the contractor shall be required to submit a proposed subcontracting plan with the proposal.

1819.705–4 Reviewing the subcontracting plan.

1819.705–470 Acquisition-specific subcontracting goals.

Section 1819.201 addresses Agencywide goals at the combined prime and subcontract levels. Appropriate subcontracting goals for an individual acquisition, however, are to be independently determined on the basis of the specific circumstances of the acquisition, consistent with FAR 19.705–4 and 1819.7002(b), and not on the basis of an Agencywide or center goal. Acquisition-specific subcontracting goals should reflect maximum practicable opportunities for all categories of small business concerns to participate in NASA programs, consistent with efficient performance. The methods outlined in NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, may also be useful in establishing reasonable subcontracting goals for small, HUBZone, and women-owned small business concerns.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999]

1819.708 Contract clauses. (NASA supplements paragraph (b))

(b)(1) The contracting officer shall use the clause at FAR 52.219–9 with its Alternate II when contracting by negotiation.

1819.708–70 NASA solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1852.219–73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219–9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.21975, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219–9, except for contracts covered by an approved commercial plan.

[64 FR 25215, May 11, 1999]

Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)

1819.804 Evaluation, offering, and acceptance.

1819.804–1 Agency evaluation.

The small business specialist shall review and evaluate all acquisition requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

Subpart 1819.10—Small Business Competitiveness Demonstration Program

1819.1005 Applicability. (NASA supplements paragraph (b))

(b) The targeted industry categories for NASA and their Standard Industrial Classification (SIC) codes are:

SIC—Industry
Code—Category
3571—Electronic Computers
3577—Computer Peripheral Equipment, not elsewhere classified
3663—Radio & TV Broadcasting and Communications Equipment
3764—Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts
3769—Guided Missile and Space Vehicle Parts and Auxiliary Equipment, not elsewhere classified
3812—Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments

3827—Optical Instruments and Lenses
7371—Computer Programming Services
7373—Computer Integrated Systems Design
7379—Computer Related Services, not elsewhere classified.

Subpart 1819.70—NASA 8 Percent Goal

1819.7000 General.

Public Laws 101–144, 101–507, and 102–389 require the NASA Administrator to ensure, to the fullest extent possible, that at least 8% of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

1819.7001 Definitions.

(a) *Small Disadvantaged Business (SDB) concern* and *Women-Owned Small Business (WOSB) concern* are defined in FAR 19.001.

(b) *Historically Black College or University (HBCU)* and *Minority Institution (MI)* are defined in FAR 26.301.

1819.7002 Contracting officer responsibility.

(a) Contracting officers must seek out as potential sources entities identified in 1819.7001 and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

(b) NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, contains guidance on developing realistic goals. It is applicable to acquisitions expected to exceed $50 million, including options. The methodology may be used for lesser value acquisitions.

1819.7003 Contract clause.

The contracting officer shall insert the clause at 1852.219–76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

Subpart 1819.71—NASA Rural Area Small Business Plan

1819.7101 Definition.

Rural area means a county with a population of fewer than twenty thousand individuals.

1819.7102 General.

Pursuant to Public Law 100–590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

1819.7103 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.219–74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed $500,000 ($1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

Subpart 1819.72—NASA Mentor-Protege Program

§ 1819.7201 Scope of subpart.

The NASA Mentor-Protege Program is designed to incentivize NASA prime contractors to assist small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small business (WOSB) concerns, in enhancing their

capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

[64 FR 10571, Mar. 5, 1999]

1819.7202 Definitions.

High-Tech is defined in 1819.001.

1819.7203 Non-affiliation.

For purposes of the Small Business Act, a protege firm may not be considered an affiliate of a mentor firm solely on the basis that the protege firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the Program. In addition, NASA shall not consider partial ownership, up to 10 percent, of a Department of Defense (DOD)-sanctioned protege firm by its DOD mentor to constitute affiliation.

1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege program to NASA contractors.

(a) In accordance with the benefits authorized by the DOD Mentor-Protege Program (Public Law 101–510, Section 831, as amended by Public Law 102–190, Section 814), a NASA contractor who is also an approved DOD mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the proteges which they are assisting under the DOD Program (Public Law 101–510, Section 831(f)(2)).

(c) NASA prime contractors may count the costs of developmental assistance provided of proteges being assisted under the DOD Program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102–190, Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and minority institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features from the DOD Mentor-Protege Program to NASA prime contractors. NASA mentors will be held to show ''good faith'' by providing actual developmental assistance beyond transferring credit from activity in the DOD Program to NASA subcontracting plans.

1819.7205 General policy.

(a) Eligible large business prime contractors, not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', who have at least one active subcontracting plan, and who are approved as mentor firms may enter into agreements with eligible entities (as defined in 1819.7209) as proteges to provide appropriate developmental assistance to enhance the capabilities of proteges to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', and that are capable of providing developmental assistance to proteges, may also be approved as mentors. An active mentor-protege arrangement requires the protege to be a subcontractor under the mentor's prime contract with NASA.

(b) The Mentor-Protege program may be used in cost reimbursement type contracts and contracts that include an award fee incentive. Costs incurred by a mentor to provide the developmental assistance described in 1819.7214 are allowable. Except for cost-plus-

award-fee contracts, such proposed costs shall not be included in the cost base used to develop a fee objective or to negotiate fee. On contracts with an award fee incentive, a contractor's Mentor-Protege efforts shall be evaluated under the award fee evaluations.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10571, Mar. 5, 1999]

§ 1819.7206 Incentives for prime contractor participation.

(a) Proposed mentor-protege efforts, except for the extent of participation of proteges as subcontractors, shall be evaluated under the Mission Suitability factor. The participation of SDB proteges as subcontractors shall be evaluated separately as a Mission Suitability subfactor (see FAR 15.304(c)(4) and 19.1202). The participation of other categories of proteges as subcontractors may be evaluated separately as part of the evaluation of proposed subcontracted efforts.

(b) Under contracts with award fee incentives, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. For purposes of earning award fee, the mentor firm's performance shall be evaluated against the criteria described in the clause at 1852.219–79, Mentor Requirements and Evaluation. This award fee evaluation shall not include assessment of the contractor's achievement of FAR 52.219–9 subcontracting plan SDB goals or proposed monetary targets for SDB subcontracting (see FAR 19.1203).

[64 FR 10571, Mar. 5, 1999, as amended at 65 FR 30013, May 10, 2000; 65 FR 46628, July 31, 2000]

1819.7207 Measurement of Program success.

The overall success of the NASA Mentor-Protege Program encompassing all participating mentors and proteges will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontractors awarded to proteges by mentor firms under NASA contracts since the date of entry into the Program;

(b) An increase in the number and dollar value of contract and subcontract awards to protege firms since the time of their entry into the Program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protege firm by its mentor firm; and

(d) An increase in subcontracting with protege firms in industry categories where they have not traditionally participating within the mentor firm's activity.

1819.7208 Mentor firms.

(a) Eligibility:

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by FAR 19.7; and

(3) Small business prime contractors that can provide developmental assistance to enhance the capabilities of proteges to perform as subcontractors and suppliers.

(b) Mentors will be encouraged to identify and select as proteges:

(1) A broad base of firms including those defined as emerging firms (e.g., a protege whose size is no greater than 50 percent of the size standard applicable to the SIC code assigned to a contracting opportunity);

(2) Firms in addition to those with whom they have established business relationships; and

(3) High-tech firms.

1819.7209 Protege firms.

(a) For selection as a protege, a firm must be:

(1) An SDB in the SIC Major Groups as determined by the Department of Commerce (see FAR 19.201(b)), HBCU, MI, or WOSB;

(2) Certified as small in the SIC code for the services or suppliers to be provided by the protege under its subcontract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) Except for SDBs, a protege firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential proteges that

they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

(c) Proteges may have multiple mentors. Proteges participating in mentor-protege programs in addition to the NASA Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10571, Mar. 5, 1999]

1819.7210 Selection of protege firms.

(a) Mentor firms will be solely responsible for selecting protege firms. The mentor is encouraged to identify and select the types of protege firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protege.

(c) The selection of protege firms by mentor firms may not be protested, except for a protest regarding the size or eligibility status of an entity selected by a mentor to be a protege. Such protests shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) (Code K) of the protest.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7211 Application process for mentor firms to participate in the Program.

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the Program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of the NASA field center where support is provided;

(3) The number of proposed mentor-protege arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar value of subcontracts awarded under NASA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities defined as proteges.

(6) Information on the proposed types of developmental assistance. For each proposed mentor-protege relationship include information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities for the protege firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protege agreement under the NASA Program, that they intend to cooperate in the establishment of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in 1819.7215 and all other provisions governing the Program.

1819.7212 OSDBU review and approval process of agreement.

(a) The information specified in 1819.7211(b) is reviewed by the NASA OSDBU. This review will be completed no later than 30 days after receipt by the OSDBU. The OSDBU will provide a copy of the submitted information to

the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates an agreement with the protege; and

(2) Submits an original and two (2) copies of the agreement to the OSDBU for approval by the NASA Mentor-protege program manager, the NASA technical program manager, and the contracting officer.

(c) Upon agreement approval, the mentor may implement a developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

1819.7213 Agreement contents.

The contents of the agreement must contain:

(a) Names and addresses of mentor and protege firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protege firm, OSDBU, and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protege;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protege firm, to include a description of the subcontract work, and a schedule for providing assistance and criteria for evaluation of the protege developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protege firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

1819.7214 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protege include:

(a) Management guidance relating to—

(1) Financial management,

(2) Organizational management,

(3) Overall business management/planning, and

(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of subcontracts under NASA contracts;

(d) Progress payments based on costs. The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

(e) Advance payments. While a mentor can make advance payments to its proteges who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if advance payments have been authorized in accordance with 1832.409–170;

(f) Loans;

(g) Rent-free use of facilities and/or equipment; and

(h) Temporary assignment of personnel to the protege for purpose of training.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7215 Obligation.

(a) The mentor or protege may voluntarily withdraw from the Program as mutually agreed by both mentor and protege.

(b) Mentor and protege firms will submit a ''lessons learned'' evaluation

to the NASA OSDBU at the conclusion of each NASA contract subject to the approved Mentor-Protege agreement.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7216 Internal controls.

(a) The NASA OSDBU will manage the Program. Internal controls will be established by the OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing any semi-annual progress reports submitted by mentors and proteges on protege development to measure protege progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where mentor-protege activity is occurring.

(b) NASA may terminate mentor-protege agreements for good cause and exclude mentor or protege firms from participating in the NASA program. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h).

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7217 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protege program manager, the NASA OSDBU, to include information as outlined in 1852.219–79(b).

(b) Proteges are encouraged to submit semi-annual reports to the OSDBU on Program progress pertaining to their mentor-protege agreement. However, costs associated with the preparation of these reports are unallowable costs under Government contracts and will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protege Program in a quarterly 'Strengths and Weaknesses' evaluation report. A copy of this assessment will be provided to the OSDBU and the contracting officer.

(d) The NASA Mentor-Protege program manager will submit semi-annual reports to the cognizant contracting officer regarding the participating prime contractor's performance in the Program for use in the award fee determination process.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7218 Program review.

At the conclusion of each year in the Mentor-Protege Program, the prime contractor and protege, as appropriate, will formally brief the NASA OSDBU, the technical program manager, and the contracting officer regarding Program accomplishments pertaining to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protege Program, in:

(1) Cost reimbursement solicitations and contracts, or solicitations and contracts with award fee incentives, that include the clause at FAR 52.219–9, Small Business Subcontracting Plan;

(2) Small business set-asides of the contract types in (a)(1) of this section with values exceeding $500,000 ($1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the clause at 1852.219–79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a

participant in the NASA Mentor-Protege Program.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
1822.000–70 Scope of part.

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.
1822.101–1 General.
1822.101–3 Reporting labor disputes.
1822.101–4 Removal of items from contractors' facilities affected by work stoppages.
1822.101–70 Admission of labor representatives to contract sites.
1822.103 Overtime.
1822.103–4 Approvals.
1822.103–5 Contract clauses.

Subpart 1822.3—Contract Work Hours and Safety Standards Act

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Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.400–70 Contacts with the Department of Labor.
1822.404–3 Procedures for requesting wage determinations.
1822.406–8 Investigations.
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1822.406–13 Semiannual enforcement reports.

Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.
1822.604–2 Regulatory exemptions.

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.
1822.804–2 Construction.
1822.807 Exemptions.
1822.810 Solicitation provisions and contract clauses.

Subpart 1822.10—Service Contract Act of 1965

1822.1001 Definitions.
1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).
1822.1008–7 Required time of submission of notice.
1822.1008–270 Additional information for the preparation of SF 98/98a.

Subpart 1822.13—Disabled Veterans and Veterans of the Vietnam ERA

1822.1303 Waivers.
1822.1306 Complaint procedures.

Subpart 1822.14—Employment of Workers with Disabilities

1822.1403 Waivers.
1822.1406 Complaint procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55755, Oct. 29, 1996, unless otherwise noted.

1822.000–70 Scope of part.

(a) Contracting officers shall consult with the installation labor relations advisor or designee when taking any of the actions prescribed or authorized in FAR part 22 or part 1822.

(b) Proposed actions having a substantial impact on the activities of NASA or other Government agencies shall be approved by the Headquarters Contractor Industrial Relations Office (Code JLR).

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101–1 General. (NASA supplements paragraph (d))

(d) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall:

(i) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor may be approached only through the prime contractor;

(ii) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(iii) Consider taking the actions described in FAR 22.101–4.

(e) Programs or requirements that result in contracts in excess of the simplified acquisition threshold shall require contractors to notify NASA of actual or potential labor disputes that are delaying or threaten to delay timely contract performance.

[61 FR 55755, Oct. 29, 1996, as amended at 64 FR 14148, Mar. 24, 1999]

1822.101–3 Reporting labor disputes.

Reports of potential or actual labor disputes affecting NASA acquisitions, operations, or services shall be submitted to the Headquarters Contractor Industrial Relations Office (Code JLR). These reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made to provide appropriate additional information. Reports shall described at a minimum:

(1) The nature of the potential or actual dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(2) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and their relationship to the total acquisition program;

(3) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(4) The need for and availability of alternative resources to furnish the items involved within the time required;

(5) Any critical items that should be removed from the plant or work site or should continue to be processed there with the consent of the parties to the dispute; and

(6) Recommended action to be taken by NASA.

1822.101–4 Removal of items from contractors' facilities affected by work stoppages. (NASA supplements paragraph (a))

(a) (3) The contracting officer shall obtain approval from Code JLR for any contemplated action.

1822.101–70 Admission of labor representatives to contract sites.

NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with safety and security regulations and performance of the contract work involved.

1822.103 Overtime.

1822.103–4 Approvals. (NASA supplements paragraph (a))

(a) The contracting officer is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving official shall obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which premiums will be approved. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office.

1822.103–5 Contract clauses. (NASA supplements paragraph (a))

(a) See 1822.101–1(e).

[64 FR 14149, Mar. 24, 1999]

Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay. (NASA supplements paragraphs (c) and (d))

(c) The Director of the Headquarters Contractor Industrial Relations Office (Code JLR) is the agency head designee.

(d) Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director of Code JLR.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.400–70 Contacts with the Department of Labor.

All contacts with the Department of Labor required by FAR subpart 22.4, except for wage determinations, shall be conducted through the Headquarters Contractor Industrial Relations Office (Code JLR). Contracting officers shall submit all pertinent information to Code JLR in support of Code JLR for contacts. For wage determinations, contracting officers shall submit all requests directly to Goddard Space Flight Center, Contractor Industrial Relations Office—GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC).

[63 FR 32763, June 16, 1998]

1822.404–3 Procedures for requesting wage determinations.

Contracting officers shall submit requests for project wage determinations to GSFC at least 55 days (70 days if possible) before issuing the solicitation.

[61 FR 55755, Oct. 29, 1996, as amended at 63 FR 32763, June 16, 1998]

1822.406–8 Investigations. (NASA supplements paragraphs (a) and (d))

(a) The contracting officer is responsible for conducting investigations of labor violations relative to contracts under their cognizance.

(d) Reports of violations shall be sent to Code JLR.

[61 FR 55755, Oct. 29, 1996, as amended at 63 FR 32763, June 16, 1998]

1822.406–9 Withholding from or suspension of contract payments. (NASA supplements paragraph (c))

(c)(4) Code JLR shall determine the disposal of funds.

1822.406–13 Semiannual enforcement reports.

Procurement officers shall submit semiannual enforcement data within 20 days after the end of the specified reporting periods to the Headquarters Office of Procurement (Code HK). Negative statements are required.

Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.

1822.604–2 Regulatory exemptions. (NASA supplements paragraph (c))

(b) Requests for exemptions shall be submitted in writing through the contracting officer to the Headquarters Contractor Industrial Relations Office (Code JLR).

[61 FR 55755, Oct. 29, 1996, as amended at 62 FR 36713, July 9, 1997]

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.

1822.804–2 Construction. (NASA supplements paragraph (b))

(b) The Headquarters Office of Procurement (Code HK) will furnish each procurement officer the listing.

1822.807 Exemptions.

Requests for exemption pursuant to FAR 22.807(a)(1), (a)(2), or (b)(5) shall be sent to the Headquarters Office of Procurement (Code HS).

1822.810 Solicitation provisions and contract clauses. (NASA supplements paragraph (e))

(e) If an offeror completes a negative representation under FAR 52.222–22, the contracting officer shall obtain the information required by FAR 52.222–26(b)(7) within 30 days of contract award. The information shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4).

Subpart 1822.10—Service Contract Act of 1965

1822.1001 Definitions.

Agency labor advisor is the Director of the Headquarters Contractor Industrial Relations Office (Code JLR). All contacts with other agencies required by FAR subpart 22.10 shall be conducted through Code JLR. Contracting officers shall submit all pertinent information to Code JLR in support of the required contacts.

1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).

1822.1008–7 Required time of submission of notice.

(a) Contracting officers shall submit the notices to Goddard Space Flight Center, Contract Industrial Relations Office—GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC) at least 70 days before initiating the associated contract actions.

(b) When the circumstances in FAR 22.1008–7(b) apply, contracting officers shall submit the required notices to GSFC at least 40 days before initiating the associated contract actions.

(c) Contracting officers shall contact GSFC before initiating any action when the circumstances in FAR 22.1008–7(c) and (d) apply.

[63 FR 32763, June 16, 1998]

1822.1008–270 Additional information for the preparation of SF 98/98a.

The information listed in this section by item number shall be furnished, in addition to that required by the SF 98/98a:

(a) Item 6. Insert on the far left side of the block the code identifying the type of proposed action:

Code	Proposed action
I	New contract (use *only* when services are not presently being performed).
II	Recompetition of services.
III	Contract modifications affecting the scope of the work.
IV	Extension of contract performance through exercise of an option or otherwise.
V	Other. When a multiple year contract (funding is not subject to annual appropriation) is to be entered into, specify ''multiple year R&D funded'' on the SF 98.

(b) Item 8. (1) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If no wage determination is available for the particular contract, insert ''None'' in Item 8.b.

(c) Item 10. Add the solicitation number.

(d) Item 12. (1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) of this subsection), list only the classes of work that the incumbent indicates are ''nonexempt.''

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) Item 13. If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) Item 14. Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

Subpart 1822.13—Disabled Veterans and Veterans of the Vietnam Era

1822.1303 Waivers. (NASA supplements paragraph (c))

(c) Requests for waivers shall be submitted to the Associate Administrator for Equal Opportunity Programs (Code E).

1822.1306 Complaint procedures.

Contracting officers shall submit all complaints to the Associate Administrator for Equal Opportunity Programs (Code E).

Subpart 1822.14—Employment of Workers with Disabilities

1822.1403 Waivers. (NASA supplements paragraph (c))

(c) Requests for waivers shall be submitted to the Associate Administrator for Equal Opportunity Programs (Code E).

1822.1406 Complaint procedures.

Contracting officers shall submit all complaints to the Associate Administrator for Equal Opportunity Programs (Code E).

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.
1823.106 Delaying award.
1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.
1823.570–1 Scope.
1823.570–2 Definitions.
1823.570–3 Contract clause.
1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 1823.70—Safety and Health

1823.7001 NASA solicitation provisions and contract clauses.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.
1823.7102 Procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 55757, Oct. 29, 1996, unless otherwise noted.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

When acquiring supplies or services from or through another Government agency (e.g., see FAR part 8 and FAR subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR subpart 23.3.

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

1823.570–1 Scope.

Sections 1823.570 through 1823.570–4 set forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619.

1823.570–2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570–4 and the clause at 1852.223–74.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated ''mission critical'' pursuant to the clause at 1852.246–70. The term also includes any applicant who is interviewed for a position described in this paragraph.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a pre-employment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

1823.570–3 Contract clause.

The contracting officer shall insert the clause at 1852.223–74, ''Drug- and Alcohol-Free Workforce,'' in all solicitations and contracts containing the clause at 1852.246–70, ''Mission Critical Space Systems Personnel Reliability Program,'' and in other solicitations and contracts exceeding $5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223–74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223–74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

Subpart 1823.70—Safety and Health

1823.7001 NASA solicitation provisions and contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223–70, Safety and Health, shall be included in all solicitations and contracts for—

(1) Negotiated acquisitions of $1,000,000 or more;

(2) Construction, repair, or alteration in excess of the simplified acquisition threshold;

(3) Acquisitions having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Acquisitions regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature; or

(ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded— (1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; or

(2) When the contracting officer, with the concurrence of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70. This clause may be modified to identify specific information that is to be included

in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(d) The contracting officer shall insert the clause at 1852.223–75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of $500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

[65 FR 37059, June 13, 2000]

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223–71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

Sec.
1824.102 General.

Subpart 1824.2—Freedom of Information Act

1824.203 Policy.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

(1) For NASA rules and regulations implementing the Privacy Act, see Privacy—NASA Regulations, (14 CFR 1212). The Act applies to any contractor maintaining a system of records to accomplish a NASA mission.

(2) Systems of records to which the Privacy Act does not apply include—

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

(A) Are maintained under contracts with educational institutions to provide training;

(B) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(C) Are similar to those maintained on other students; and

(D) Are commingled with their records on other students.

Subpart 1824.2—Freedom of Information Act

1824.203 Policy. (NASA supplements paragraphs (a) and (b))

(a) For NASA implementation of the Freedom of Information Act, see Availability of Agency Records to Members of the Public (14 CFR part 1206).

(b) When receiving any Freedom of Information Act request from the public, the contracting officer shall immediately refer the request to the Freedom of Information Act Officer, NASA Information Center, or other responsible point of contact as set forth in installation procedures.

[61 FR 55758, Oct. 29, 1996. Redesignated at 62 FR 36713, July 9, 1997]

PART 1825 FOREIGN ACQUISITION

Sec.
1825.003 Definitions.
1825.003–70 NASA definitions.

Subpart 1825.1 Buy American Act—Supplies

1825.103 Exceptions.

Subpart 1825.4 Trade Agreements

1825.400 Scope of subpart.

Subpart 1825.9 Customs and Duties

1825.901 Policy.
1825.903 Exempted supplies.

Subpart 1825.10 Additional Foreign Acquisition Regulations

1825.1001 Waiver of right to examination of records.
1825.1002 Use of foreign currency.

Subpart 1825.11 Solicitation Provisions and Contract Clauses

1825.1101 Acquisition of supplies.
1825.1103 Other provisions and clauses.
1825.1103–70 Export control.

Subpart 1825.70 Foreign Contract and International Agreement Clearances

1825.7000 Scope of subpart.
1825.7001 Definition.
1825.7002 Foreign Contracts.
1825.7003 International Agreements.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 65 FR 10031, Feb. 25, 2000, unless otherwise noted.

1825.003 Definitions.

1825.003–70 NASA definitions.

''Canadian end product'', for an item with an estimated value of $25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of $25,000, the definition at FAR 25.003 applies.

Subpart 1825.1— Buy American Act—Supplies

1825.103 Exceptions.

(a)(i) The procurement officer must send proposed public interest determinations to the Associate Administrator for Procurement (Code HS) for approval.

(ii) The Associate Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of $25,000 or less as defined in 1825.003–70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart.

(b) The Buy American Act and the Balance of Payments Program apply to all acquisitions of Japanese end products or services in excess of $2,500.

Subpart 1825.9—Customs and Duties

1825.901 Policy.

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR part 1217.

1825.903 Exempted supplies.

(a) Through delegation from the Associate Administrator for Procurement, procurement officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c) (http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file Customs Form 7501, Entry Summary. This form is available from Service Ports (http://www.customs.ustreas.gov/location/ports/index.htm) or from NASA Headquarters' forms library (https://extranet.hq.nasa.gov/nef/user/form_search.cfm). All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

[65 FR 45306, July 21, 2000]

Subpart 1825.10—Additional Foreign Acquisition Regulations

1825.1001 Waiver of right to examination of records.

(b) The Administrator is the approval authority for waivers. The contracting officer must submit the waiver request, consisting of the determination and findings prescribed in FAR 25.1001(b) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

1825.1002 Use of foreign currency.

(a) The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

Subpart 1825.11—Solicitation Provisions and Contract Clauses

1825.1101 Acquisition of supplies.

(e) The contracting officer must add paragraph (k) as set forth in 1852.225–8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR subpart 25.9 and 1825.903.

1825.1103 Other provisions and clauses.

1825.1103–70 Export control.

(a) Background. (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or ''foreign person'', as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a ''foreign person''. (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii))

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to

the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) Contract clause. Insert the clause at 1852.225–70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

Subpart 1825.70—Foreign Contract and International Agreement Clearances

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for pre-award clearance of foreign contracts, and for coordination of international agreements that contemplate award of contracts using appropriated funds.

1825.7001 Definition.

Foreign contract acquisition, as used in this subpart, means the acquisition by negotiation of supplies or services, including construction and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico; or

(b) Contracts with the Canadian Commercial Corporation.

1825.7002 Foreign contracts.

(a) *Policy*. Following the procedure in paragraph (b) of this section, the Acquisition Team must coordinate with Headquarters before initiating any foreign contract acquisition if the acquisition is valued above $100,000 or involves export control issues. An acquisition involves export control issues if it entails—

(1) Importing or exporting goods or technical data from or to a country listed in 22 CFR 126.1(a) or 126.1(d) (Subchapter M, the International Traffic in Arms Regulations) (http://www.pmdtc.org/itar2.htm);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR part 121 which would require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR part 774 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR part 740, Supplement 1, Country Group D; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) *Procedure*. (1) The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in paragraph (a) of this section must submit the following information to the Headquarters Office of External Relations (Code I) through the contracting officer and the Headquarters Office of Procurement (Code HS)—

(i) The name of the foreign entity, the country or countries involved, and the purpose of the contract;

(ii) The Space Act agreement(s) involved, if any;

(iii) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and

(iv) The reason why the acquisition is being placed with a foreign entity.

(2) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through the Headquarters Office of External Relations (Code I).

(3) The lead-time for obtaining an export license is 60 to 90 days. Requests

for Headquarters clearance should be initiated as early as possible.

1825.7003 International agreements.

Office of Procurement (Code HS) concurrence is required for all Memoranda of Understanding with foreign entities and for other types of international agreements which contemplate the procurement of goods or services using U.S. appropriated funds. No Code H concurrence is required for agreements which are done solely on a cooperative basis.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1827—PATENTS, DATA, AND COPYRIGHTS

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1827.670–2 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36715, July 9, 1997, unless otherwise noted.

1827.000 Scope of part.

This part prescribes NASA policies, procedures, and clauses pertaining to patents, data, and copyrights. The provisions of FAR Part 27 apply to NASA acquisitions unless specifically excepted in this part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.

Administrator, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

Contract, as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, in lieu of the definition in FAR 27.301, as used in this subpart, means conceived or first actually reduced to practice; provided that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Reportable item, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

Subject invention, in lieu of the definition in FAR 27.301, as used in this subpart, means any reportable item that is or may be patentable or otherwise

protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

[62 FR 36715, July 9, 1997, as amended at 62 FR 58688, Oct. 30, 1997; 63 FR 63209, Nov. 12, 1998]

1827.302 Policy. (NASA supplements paragraphs (a), (b), (c), (d), (e), (f), (g), and (i)).

(a) Introduction.

(i) NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation to related property rights is based upon Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum or Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(d)(4) of Executive Order 12591. NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. Chapter 18, as amended.

(ii) NASA contracts subject to Section 305 of the Act shall ensure the prompt reporting of reportable items in other to protect the Government's interest and to provide widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) Contractor right to elect title.

(i) For NASA contracts, the contractor right to elect title only applies to contracts with small businesses and non-profit organizations. For other business entities, see subdivision (ii) of this paragraph.

(ii) Contractor right to request a waiver of title. For NASA contracts with other than a small business firm or a nonprofit organization (contracts subject to Section 305 of the Act), it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in FAR 27.302(c) and the march-in rights of FAR 27.302(f) and 1827.302(f)) in and to any subject invention if the Administrator determines that the interests of the United States will be served. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1. Waiver may be requested in advance of contract award for any or all of the subject inventions, or for individually identified subject inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(iii) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) Government license. For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR Section 1245, Subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

(d) Government right to receive title. Under any NASA contract with other than a small business or nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), title to subject inventions vests in NASA when the determinations of Section 305(a)(1) or 305(a)(2) have been made. The Administrator may grant a waiver of title in accordance with 14 CFR Section 1245.

(e) Utilization reports. For any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(f) March-in rights. For any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(g) Preference for United States industry. Waiver of the requirement for the agreement for any NASA contract with other than a small business firm or a nonprofit organization shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(i) Minimum rights to contractor.

(1) For NASA contracts with other than a small business firm or a nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with 14 CFR 1245, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The Administrator is the approval authority for revoking or modifying a license. The procedures for revocation or modification are described in 37 CFR 404.10 and 14 CFR 1245.108.

1827.303 Contract clauses. (NASA supplements paragraphs (a), (b), (c) and (d))

(a)(1)(A) See 1827.303–70(a).

(B) To qualify for the clause at FAR 52.227–11, a prospective contractor may be required to represent itself as either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with FAR 19.302 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as nonprofit organization.

(5) Alternate IV to 52.227–11 is not used in NASA contracts. See instead 1827.303–70(a).

(b)(1)(ii) FAR 52.227–12 is not used in NASA contracts. See instead 1827.303–70(b).

(c)(1)(ii) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, see 1827.303–70(f).

(2) See 1827.303–70 (b) and (f).

(d)(1) When one of the conditions in FAR 27.303(d)(1) (i) through (iv) is met, the contracting officer shall consult with the installation intellectual property counsel to determine the appropriate clause.

[62 FR 36715, July 9, 1997, as amended at 64 FR 36606, July 7, 1999]

1827.303–70 NASA solicitation provisions and contract clauses.

(a) When the clause at FAR 52.227–11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227–11.

(b) The contracting officer shall insert the clause at 1852.227–70, New Technology, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 305(a) of the Act), if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of

work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in paragraphs (b)(1) through (5) of this section.

(c) The contracting officer shall insert the provision at 1852.227–71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227–70, New Technology (see paragraph (b) of this section).

(d) The contracting officer shall insert the clause at 1852.227–72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) or 1852.227–70, New Technology (see paragraph (c) of this section). It may also be inserted, upon consultation with the installation intellectual property counsel, in solicitations and contracts using another patent rights clause. The New Technology Representative shall be the Technology Utilization Officer or the Staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the intellectual property counsel (by titled position) having cognizance of patent matters for the installation concerned.

(e) The contracting officer shall insert the provision at 1852.227–84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

(f) As authorized in FAR 27.303(c)(2), when work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227–85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the installation intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227–13, Patent Rights—Acquisition by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304–4(a) regarding subcontracts with U.S. firms.)

[62 FR 36715, July 9, 1997, as amended at 62 FR 58688, Oct. 30, 1997]

1827.304 Procedures.

1827.304–1 General. (NASA supplements paragraphs (a), (b), (c), (f), (g), and (h))

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor)

may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.302–(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization.

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Associate General Counsel (Intellectual Property) (Code GP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227–72 and forwarded, with recommendation, to Code GP for approval.

1827.304–2 Contracts placed by or for other Government agencies. (NASA supplements paragraph (a))

(a)(3) When a contract is placed for another agency and the agency does not request the use of a specific patent rights clause, the contracting officer, upon consultation with the installation intellectual property counsel, may use the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) as modified by 1852.227–11 (see 1827.303–70(a)) or 1852.227–70, New Technology (see 1827.303–70(b)).

1827.304–3 Contracts for construction work or architect-engineer services. (NASA supplements paragraph (a))

(a) For construction or architect-engineer services contracts with other than a small business or nonprofit organization, see 1827.303–70(b).

1827.304–4 Subcontracts. (NASA supplements paragraph (a))

(a)(i) Unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(A) The clause at 1852.227–70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303–70(b) (1)–(6).

(B) The clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), modified by 1852.227–11 (see 1827.303–70(a)), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(ii) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the intellectual property counsel.

1827.304–5 Appeals.

FAR 27.304–5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

1827.305 Administration of the patent rights clauses.

1827.305–3 Follow-up by Government.

1827.305–370 NASA patent rights and new technology follow-up procedures.

(a) For each contract containing a patent rights clause or the clause at 1852.227–70, New Technology, the contracting officer shall take the following actions:

(1) Furnish, or require the contractor or furnish directly, the New Technology Representative and the Patent Representative a copy of each contract (and modifications thereto), and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the representatives indicate otherwise; and

(2) Notify the New Technology Representative as to which installation organizational element has technical cognizance of the contract.

(b) The New Technology Representative shall take the following actions:

(1) Review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting and recordkeeping requirements;

(2) Forward to the Patent Representative copies of all contractor and subcontractor written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the reports.

(3) Consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract.

(4) Forward to the Patent Representative all correspondence relating to inventions and waivers under the New Technology clause or election of title under the Patent Rights—Retention by the Contractor (Short Form) clause.

(5) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the clause at 1852.227–70, New Technology, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications;

(2) Determine inventorship;

(3) Ensure the preparation of instruments establishing the Government's rights' and

(4) Conduct selected reviews to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the clause at 1852.227–70, New Technology. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would constitute a final decision under the Disputes clause, involve any change or increase in the work required to be performed under the contact that is inconsistent with any right of appeal provided in FAR 27.304–5 or 14 CFR 1245, Subpart 1, or otherwise be outside the scope of the contract.

(e) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence.

1827.305–371 New technology reporting plan.

In contracts with an estimated cost in excess of $2,500,000 (or less when appropriate) that contain the clause at 1852.227–70, New Technology, the contracting officer may require the contractor to submit for post-award Government approval a detailed plan for new technology reporting that demonstrates an adequate understanding of and commitment to the reporting requirements of the clause.

1827.305–4 Conveyance of invention rights acquired by the Government. (NASA supplements paragraph (a))

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227–70, New Technology, a determination of title is to be made in accordance with Section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause. (NASA supplements paragraphs (d), (e), (f), (g), (h), and (i))

(d) *Protection of limited rights data specified for delivery.* The contracting officer shall consult with the installation patent or intellectual property counsel regarding any questions concerning the delivery of limited rights data and/or the use of Alternate II that may arise from an offeror's response to the provision at FAR 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(e) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation patent or intellectual property counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise from an offeror's response to the provision at FAR 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(f) *Copyrighted data.*—(1)(ii) The contracting officer shall consult with the installation patent or intellectual property counsel before granting permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract.

(iv) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for obtaining a copyright license of a different scope than set forth in subparagraph (c)(1) of the clause at FAR 52.227–14, Rights in Data—General, for any contract or class of contracts.

(2)(i) The procurement officer is the approval authority for obtaining a copyright license of a different scope than that set forth in subparagraph(c)(2) of the clause at FAR 52.227–14 for any contract or class of contracts.

(g) *Release, publication, and use of data.*

(3)(A) NASA's intent is to ensure the most expeditious dissemination of computer software developed by it or its contractor. Accordingly, when the clause at FAR 52.227–14, Rights in Data-General, is modified by 1852.227–14 (see 1827.409(a)), the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission.

(B) The contracting officer may, in consultation with the installation patent or intellectual property counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if:

(a) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;

(b) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by

cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(c) The concurrence of the Headquarters Office of Aeronautics Commercial Technology Division (Code RW) is obtained.

(C)(a) The contractor's request for permission in accordance with 1827.404(g)(3)(A) may be made either before contract award or during contract performance.

(b) Any permission granted in accordance with 1827.404(g)(3)(B) (a) or (b) shall be by express contract provision (or amendment) overriding subparagraph (d)(3) or FAR 52.227–14, Rights in Data—General, (as modified by 1852.227–14), rather than by deleting it. The contract provision may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(c) Any permission granted in accordance with 1827.404(g)(3)(B)(c) may be either by deleting subparagraph (d)(3) or by special contract provision, as appropriate.

(d) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at FAR 52.227–14 and without any obligation of confidentiality on the part of the Government, unless in accordance with 1827.404(g)(3)(B)(b) the contributions of the Contractor may be considered ''substantial'' for the purposes of FAR 27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(D) If the contractor has not been granted permission to copyright, paragraph (d)(3)(ii) of the clause at FAR 52.227–14, Rights in Data—General (as modified by 1852.227–14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The contracting officer may, in consultation with the installation intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

(h) *Unauthorized marking of data.* The contracting officer shall consult with the installation patent or intellectual property counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227–14, Rights in Data—General.

(i) *Omitted or incorrect notices.* The contracting officer shall consult with the installation patent or intellectual property counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227–14, Rights in Data—General.

§ 1827.405 Other data rights provisions. (NASA supplements paragraphs (b) and (c))

(b)(2) *Acquisition of existing computer software.* See 1827.409(k) (i)–(ii) and 1827.409–70 for modifications and alternatives to the clause at 52.227–19.

(c) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain delivery of restricted computer software as defined in the clause at FAR 52.227–20, Rights in Data—SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be required with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

1827.406 Acquisition of data. (NASA supplements paragraph (a))

(a) *General.* Requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

1827.406–70 Reports of work.

(a) When considered necessary for monitoring contract performance, contracting officers must require contractors to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement), interagency agreements, or in cost-reimbursement supply contracts. This purpose may be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(1) *Monthly progress reports.* Reports should be in narrative form, brief, and informal. They should include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(2) *Quarterly progress reports.* In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(3) *Final report.* This report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract. The final report must comply with NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information.

(4) *Report Documentation Page.* The final report must include a completed Report Documentation Page, Standard Form (SF) 298 as the final page of the report.

(b) The contracting officer must consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the contract.

(c) *Submission of final report.* In addition to the original of the final report submitted to the contracting officer, contracts containing the clause at 1852.235–70, Center for AeroSpace Information—Final Scientific and Technical Reports (see 1835.070(a)), must require the concurrent submission of a reproducible copy and a printed or reproduced copy of the final report to the NASA Center for AeroSpace Information (CASI).

(d) *NASA review of final report.* When required by the contract, final reports submitted to NASA for review, shall be reviewed for technical accuracy, conformance with applicable law, policy and publication standards, and to determine the availability and distribution of NASA-funded documents containing scientific and technical information (STI) (NASA Form 1676, NASA Scientific and Technical Document Availability Authorization (DAA)). The final report must not be released outside of NASA until NASA's DAA review has been completed and the availability of the document has been determined. The document is considered available when it is accessible through CASI.

[65 FR 45307, July 21, 2000]

1827.408 Cosponsored research and development activities.

The contracting officer shall consult with the installation patent or intellectual property counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving

cosponsored research and development activities.

1827.409 Solicitation provisions and contract clauses. (NASA supplements paragraph (a), (b), (c), (d), (e), (i), and (k))

(a) The contracting officer shall add subparagraph (3) set forth in 1852.277–14 to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(b) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for use of Alternate I. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(c) The contracting officer shall normally add the disclosure purposes listed in FAR 27.404(d)(1) (i)–(v) to subparagraph (g)(2). However, the contracting officer may, upon consultation with the installation patent or intellectual property counsel, make deletions from the specific purposes listed. If all are deleted, the word ''None'' must be inserted. Additions to those specific purposes listed may be made only with the approval of the procurement officer and concurrence of the installation patent or intellectual property counsel.

(d) The contracting officer shall consult with the installation patent or intellectual property counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III. Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(e) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for the use of Alternate IV in any contract other than a contract for basic or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities).

(i) The contract officer shall modify the clause at FAR 52.227–17, Rights in Data—Special Works by adding paragraph (f) as set forth in 1852.227–17.

(k)(i) The contracting officer shall add paragraph (e) as set forth in 1852.227–19(a) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(ii) The contracting officer shall add paragraph (f) as set forth at 1852.227–19(b) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(iii) See 1827.409–70.

1827.409–70 NASA contract clause.

The contracting officer shall use the clause at 1852.227–86, Commercial Computer Software—Licensing, in lieu of FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

Subpart 1827.6—Foreign License and Technical Assistance Agreements

1827.670 Space Station technical data and goods.

1827.670–1 Policy.

NASA and its contractors shall comply will all applicable export control

laws, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, with respect to the transfer of technical data and goods to any International Space Station program multilateral partner or contractor. When authorized, certain technical data in support of the International Space Station program may be exported to a foreign recipient specified in writing by the contracting officer. Contracting officers, or designees, will assure that any transfer of data to a foreign recipient will be in compliance with all applicable directives, including the NASA Export Control Program.

1827.670–2 Contract clause.

The contracting officer shall insert the clause at 1852.227–87, Transfer of Technical Data Under Space Station International Agreements, in all solicitations, contracts, and purchase orders in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR Parts 120–130, or the Export Administration Regulations (EAR), 15 CFR Parts 730–799 in accordance with the NASA Export Control Program.

PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.

1828.101 Bid guarantees.
1828.101–70 NASA solicitation provision.
1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.
1828.103–70 Subcontractors performing construction work under nonconstruction contracts.
1828.103–71 Solicitation requirements and contract clauses.
1828.106 Administration.
1828.106–6 Furnishing information.

Subpart 1828.2—Sureties

1828.202 Acceptability of corporate sureties.
1828.203 Acceptability of individual sureties.

Subpart 1828.3—Insurance

1828.307 Insurance under cost-reimbursement contracts.
1828.307–1 Group insurance plans.
1828.307–2 Liability.
1828.307–70 Insurance of industrial facilities.
1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1828.311–1 Contract clause.
1828.311–2 Agency solicitation provisions and contract clauses.
1828.311–270 NASA solicitation provisions and contract clauses.
1828.370 Fixed-price contract clauses.
1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.
1828.372 Clause for minimum insurance coverage.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55765, Oct. 29, 1996, unless otherwise noted.

Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101–70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.228–73, Bid Bond, in construction solicitations where offers are expected to exceed $100,000 and a performance bond or a performance and payment bond is required (see FAR 28.102 and 28.103). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million.

1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.

1828.103–70 Subcontractors performing construction work under nonconstruction contracts.

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction

work is in excess of $1000,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102–1(b)(1) when the subcontract construction work is greater than $25,000 but not greater than $100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102–2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

1828.103–71 Solicitation requirements and contract clauses.

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in FAR 28.102–3. When alternative payment protections are required, insert a clause substantially the same as FAR 52.228–13, Alternative Payment Protections, appropriately modified.

1828.106 Administration.

1828.106–6 Furnishing information. (NASA supplements paragraph (c))

(c) The contracting officer is the agency head's designee.

Subpart 1828.2—Sureties

1828.202 Acceptability of corporate sureties. (NASA supplements paragraph (d))

(d) Contracting officers may obtain access to Department of Treasury Circular 570 through the internet at http://www.ustreas.gov/treasury/bureaus/finman/c570.html.

1828.203 Acceptability of individual sureties. (NASA supplements paragraph (g))

(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1828.3—Insurance

1828.307 Insurance under cost-reimbursement contracts.

1828.307–1 Group insurance plans. (NASA supplements paragraph (a))

(a) The procurement officer is the approval authority.

1828.307–2 Liability. (NASA supplements paragraph (b))

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(*b*) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Associate Administrator for Procurement (Code HS) is the approval authority.

1828.307–70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the contracting officer, the contractor or lessee shall ensure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307–2.

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311–1 Contract clause.

The contracting officer must insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

[65 FR 54440, Sept. 8, 2000]

1828.311–2 Agency solicitation provisions and contract clauses.

1828.311–270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228–80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228–7 and the associated clause at 1852.228–81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228–82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

[65 FR 54440, Sept. 8, 2000]

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228–70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228–70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume this risk, the clause at 1852.228–70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228–71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228–70 is used, the term ''Contractor's premises'' shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities, NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow

down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228–72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of $100,000 or more when the work to be performed involves ''Protected Space Operations'' (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of $100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to that particular launch.

(d) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of $100,000 or more when the work is to be performed involves ''Protected Space Operations'' (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extensions, to existing contracts under $100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228–75, Minimum Insurance Coverage, in fixed-price solicitations and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

PART 1829—TAXES

Subpart 1829.1—General

Sec.
1829.101 Resolving tax problems.

Subpart 1829.2 Federal Excise Taxes

1829.203 Other Federal tax exemptions.
1829.203–70 NASA Federal tax exemptions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55767, Oct. 29, 1996, unless otherwise noted.

Subpart 1829.1—General

1829.101 Resolving tax problems. (NASA supplements paragraph (a))

(a)(i) The Headquarters Office of the General Counsel (Code G) is the designated legal counsel for all external

contacts on FAR part 29 tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

(ii) Tax problems that cannot be solved readily by reference to FAR Part 29 shall be forwarded to Code G through the installation's Office of Chief Counsel. The following material, as applicable, shall be forwarded to Code G with a copy to the Associate Administrator for Procurement (Code HS):

(A) A comprehensive statement of pertinent facts, including documents and correspondence.

(B) A copy of the contract.

(C) A thorough review of the legal issues involved and recommended action.

(D) If appropriate, a statement of the problem's effects on acquisition policies and procedures, with recommendations.

Subpart 1829.2—Federal Excise Taxes

1829.203 Other Federal tax exemptions.

1829.203.70 NASA Federal tax exemptions.

(a) The Associate Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Headquarters Office of Procurement (Code HS).

(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) The contracting officer shall post a copy of the permit for inspection.

PART 1830—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 1830.2—CAS Program Requirements

Sec.
1830.201–5 Waiver.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use and For Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.
1830.7001–1 Contract facilities capital estimates.
1830.7001–2 DD Form 1861 completion instructions.
1830.7001–3 Preaward FCCOM applications.
1830.7001–4 Postaward FCCOM applications.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002–1 Definitions.
1830.7002–2 Cost of money calculations.
1830.7002–3 Representative investment calculations.
1830.7002–4 Determining imputed cost of money.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55767, Oct. 29, 1996, unless otherwise noted.

Subpart 1830.2—CAS Program Requirements

1830.201–5 Waiver. (NASA supplements paragraphs (a) and (e))

(a)(2) The Associate Administrator for Procurement is the only individual authorized to approve CAS waivers. Requests for waivers that meet the conditions in FAR 30.201–5(b) must be submitted to the Headquarters Office of Procurement (Code HK) at least 30 days before the anticipated contract award date.

(e) The Associate Administrator for Procurement will submit NASA's report to the CAS Board.

[65 FR 49206, Aug. 11, 2000]

1830.7001 Facilities capital employed for facilities in use.

1830.7001–1 Contract facilities capital estimates.

To estimate facilities capital cost of money (FCCOM), the contracting officer shall use DD Form 1861, Contract Facilities Capital Cost of Money, after evaluating the contractor's cost proposal, establishing cost of money factors, and developing a prenegotiation cost objective.

1830.7001–2 DD For 1861 completion instructions.

(a) List overhead pools and direct-charging services centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective, and list them against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to compute the FCCOM estimated to be incurred each year. The sum of these products represents the estimated contract FCCOM for the year's effort.

(d) Add the yearly estimates to calculate the total contract FCCOM.

1830.7001–3 Preaward FCCOM applications.

Apply FCCOM in establishing cost and price objectives as follows:

(a) *Cost objective.* Us the FCCOM with normal, booked costs in establishing a cost objective or the target cost of an incentive type contract. Do not subsequently adjust these target costs when actual cost of money rates become available during the contract performance period.

(b) *Profit/fee objective.* Do not include FCCOM in the cost base when establishing a prenegotiation profit/fee objective. Use only normal, booked costs in this cost base.

1830.7001–4 Postaward FCCOM applications.

(a) *Interim billings based on costs incurred.* (1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These FCCOM calculations are interim estimates subject to adjustment.

(2) As actual cost of money factors are finalized, use the new factors to calculate FCCOM for the next accounting period.

(b) *Final settlements.* (1) Contract FCCOM for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF.

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002–1 Definitions.

(a) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of such rates for each cost accounting period during which the capital asset is being constructed, fabricated, or developed.

(b) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the capital asset.

1830.7002–2 Cost of money calculations.

(a) The interest rate referenced in 1830.7002–1(a)(1) is established semi-annually and published in the FEDERAL REGISTER during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate referenced in 1830.7002–1(a)(2), multiply the rates in effect during the months of construction by the number of months each rate was in effect, and then divide the sum of the products by the total number of months.

1830.7002–3 Representative investment calculations.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If the majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either:

(1) Determine a representative investment for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may either:

(1) Determine a representative investment for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(d) The method chosen by the contractor to determine the representative investment amount may be different for each capital asset being constructed, fabricated, or developed, provided the method fits the expenditure pattern of the costs incurred.

1830.7002–4 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 1830.7002–2) to the representative investment (see 1830.7002–3).

(1) When a representative investment is determined for a cost accounting period in accordance with 1830.7002–3(b)(1) or 1830.7002–3(c)(1), the cost of money rate shall be the time-weighted average rate.

(2) When a monthly representative investment is used in accordance with 1830.7002–3(b)(2) or 1830.7002–3(c)(2), the cost of money rate shall be that in effect each month. Under this method, the FCCOM is determined monthly, and the total for the cost accounting period is the sum of the monthly calculations.

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the accounting period or the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction, fabrication, or development of an asset takes more than one accounting period, the cost of money capitalized for the first accounting period will be included in determining the representative investment for any future cost accounting periods.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2—Contracts With Commercial Organizations

Sec.

1831.205 Selected costs.
1831.205–32 Precontract costs.
1831.205–70 Contract clause.
1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.
1831.205–671 Solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205–32 Precontract costs.

(1) Precontract costs are applicable only to—

(i) Sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts; or

(ii) Awards resulting from broad agency announcements.

(2) The procurement officer is the approval authority for the use of precontract costs. Authorization shall be in writing and must address the following:

(i) The necessity for the contractor to initiate work prior to contract award;

(ii) The start date of such contractor effort;

(iii) The total estimated time of the advanced effort; and

(iv) The cost limitation.

(3) Authorization to incur precontract costs must be provided to the contractor in writing and must include the following:

(i) The start date for incurrence of such costs;

(ii) The limitation on the total amount of precontract costs which may be incurred;

(iii) A statement that the costs are allowable only to the extent they would have been if incurred after formal contract award; and

(iv) A statement that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 38777, June 22, 2000; 65 FR 46628, July 31, 2000]

1831.205–70 Contract clause.

The contracting officer must insert the clause at 1852.231–70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 46628, July 31, 2000]

1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer must evaluate the reasonableness of compensation for service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of $500,000, and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer must ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of $500,000; and

(2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors must be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section must be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, must be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer must ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b) (1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award must be documented in the contract file.

[62 FR 4467, Jan. 30, 1997, as amended at 65 FR 46628, July 31, 2000]

1831.205–671 Solicitation provision.

The contracting officer must insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for

services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of $500,000.

[62 FR 4467, Jan. 30, 1997, as amended at 65 FR 46628, July 31, 2000]

PART 1832—CONTRACT FINANCING

Sec.
1832.006–2 Definitions.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.
1832.111–70 NASA contract clause.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202–1 Policy.
1832.206 Solicitation provisions and contract clauses.

Subpart 1832.4—Advance Payments For Non-Commercial Items

1832.402 General.
1832.406 Letters of credit.
1832.407 Interest.
1832.409 Contracting officer action.
1832.409–1 Recommendation for approval.
1832.409–170 NASA procedure for approval.
1832.410 Findings, determination, and authorization.
1832.412 Contract clause.
1832.412–70 NASA Contract clauses.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501–1 Customary progress payment rates.
1832.501–2 Unusual progress payments.
1832.502 Preaward matters.
1832.502–2 Contract finance office clearance.
1832.502–4 Contract clauses.
1832.502–470 NASA contract clause.
1832.503 Postaward matters.
1832.503–5 Administration of progress payments.
1832.504 Subcontracts.

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702–70 NASA policy.
1832.704 Limitation of cost or funds.
1832.704–70 Incrementally funded fixed-price contracts.
1832.705 Contract clauses.
1832.705–2 Clauses for limitation of cost or funds.
1832.705–270 NASA clauses for limitation of cost or funds.

Subpart 1832.9—Prompt Payment

1832.906 Contract financing payments.
1832.908 Contract clauses.

Subpart 1832.10—Performance-Based Payments

1832.1001 Policy.
1832.1004 Procedures.
1832.1005 Contract clauses.
1832.1009 Title.

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

1832.006–2 Definitions.

The Associate Administrator for Procurement is the Agency remedy coordination official.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.

1832.111–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232–79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202–1 Policy. (NASA supplements paragraph (b))

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts. (see 1832.402).

1832.206 Solicitation provisions and contract clauses. (NASA supplements paragraph (g))

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232–30.

Subpart 1832.4—Advance Payments for Non-Commercial Items

1832.402 General. (NASA supplements paragraph (e))

(e)(1) The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is $25,000,000 or less, and for all increases to such contracts over $25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed, effective through September 30, 2000 (for SBIRs) and September 30, 2001 (for STTRs), authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HK).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

[61 FR 55768, Oct. 29, 1996, as amended at 63 FR 14040, Mar. 24, 1998]

1832.406 Letters of credit. (NASA supplements paragraph (b))

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

1832.407 Interest. (NASA supplements paragraph (d))

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.

1832.409–1 Recommendation for approval.

1832.409–170 NASA procedure for approval.

In addition to the items listed in FAR 32.409–1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

(a) Name of the cognizant NASA Headquarters program or staff office;

(b) Name and phone number of the contracting officer or negotiator;

(c) A copy of the proposed advance payments clause;

(d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see subpart 1815.404–470);

(e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

[61 FR 55769, Oct. 29, 1996, as amended at 62 FR 36721, July 9, 1997; 63 FR 9967, Feb. 27, 1998]

1832.410 Findings, determination, and authorization. (NASA supplements paragraph (b))

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase ''Advance payments (In an amount not to exceed $* * * at any time outstanding)'' in all determinations and findings. The phrase means the maximum unliquidated dollar

amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account if no special bank account is required.

(iii) Use format subparagraph (a)(6), and not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use ''is in the public interest.''

(v) In format paragraph (c), use the phrase ''(the amount at any time outstanding)'' in all determinations and findings.

1832.412 Contract clause. (NASA supplement paragraphs (e) and (f))

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

[63 FR 14040, Mar. 24, 1998]

1832.412–70 NASA Contract clauses.

When the clause at FAR 52.232–12 or its Alternates II or V are used, insert the clause at 1852.232–70, NASA Modification of FAR 52.232–12.

[63 FR 14040, Mar. 24, 1998]

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501–1 Customary progress payment rates. (NASA supplements paragraph (a))

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232–16.

1832.501–2 Unusual progress payments.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the use of unusual progress payments.

[63 FR 14040, Mar. 24, 1998]

1832.502 Preaward matters.

1832.502–2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the actions at FAR 32.502–2, except the Associate Administrator for Procurement (Code HK) is the approval authority for any deviations addressed in FAR 32.502–2(b).

[63 FR 14040, Mar. 24, 1998]

1832.502–4 Contract clauses.

1832.502–470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232–82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

1832.503 Postaward matters.

1832.503–5 Administration of progress payments. (NASA supplements paragraph (c).)

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a

uniform liquidation rate and under the jurisdiction of the same payment office.

[65 FR 31102, May 16, 2000]

1832.504 Subcontracts. (NASA supplements paragraph (c))

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501–2.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702–70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in paragraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more.

(2) The period of performance under the contract overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at award.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions in 1832.702–70(a) (1) through (3) are met and the initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702–70 (a) through (c). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(e) A class deviation from the conditions set forth in paragraphs 1832.702–70 (a), (b) and (c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program (through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30, 2001). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

[61 FR 55768, Oct. 29, 1996, as amended at 63 FR 14040, Mar. 24, 1998]

1832.704 Limitation of cost or funds.

1832.704–70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232–77, Limitation of Funds (Fixed Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232–77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232–77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.705 Contract clauses.

1832.705–2 Clauses for limitation of cost or funds.

1832.705–270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232–81, Contract Funding, in Section B of solicitations and contracts

containing the clause at FAR 52.232–22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

Subpart 1832.9—Prompt Payment

1832.906 Contract financing payments. (NASA supplements paragraph (a))

(a) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the FEDERAL REGISTER (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

[61 FR 55768, Oct. 29, 1996, as amended at 64 FR 36606, July 7, 1999]

1832.908 Contract clauses. (NASA supplements paragraph (c).)

(c)(3) When the clause at FAR 52.232–25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert ''17th'' in lieu of ''30th'' in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii).

[64 FR 5621, Feb. 4, 1999]

Subpart 1832.10—Performance-Based Payments

1832.1001 Policy.

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (*e.g.*, proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement Contract Management Division (Code HK) to use performance-based payments in competitive negotiated solicitations under $50M. The request for approval must include an assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

[65 FR 31102, May 16, 2000]

1832.1004 Procedures.

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403–3). When using performance-based payments in competitive negotiated acquisitions under $50 million, contracting officers should consider the use of alternative evaluation methods, *e.g.*, qualitative evaluation under Mission Suitability or another appropriate factor.

[65 FR 31103, May 16, 2000]

1832.1005 Contract clauses. (NASA supplements paragraph (a))

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232–32 in accordance with 1832.1009.

(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under $50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 31103, May 16, 2000]

1832.1009 Title.

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses. (NASA supplements paragraphs (a), (b), and (c)).

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232–34(c) with a description of the EFT mechanism that will be used for the contract.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.

[64 FR 18373, Apr. 14, 1999]

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

Sec.
1833.103 Protests to the agency.
1833.104 Protest to GAO.
1833.106 Solicitation provision and contract clause.
1833.106–70 Solicitation provision.

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.
1833.210 Contracting officer's authority.
1833.211 Contracting officer's decision.
1833.215 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55771, Oct. 29, 1996, unless otherwise noted.

Subpart 1833.1—Protests

1833.103 Protests to the agency. (NASA supplements paragraphs (c), (d) and (f).)

(c) An independent review under the provision at 1852.233–70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy AssociateAdministrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States GeneralAccounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the contracting officer or alternatively requests an independent review, the decision of the contracting officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

[62 FR 11108, Mar. 11, 1997, as amended at 64 FR 36607, July 7, 1999]

1833.104 Protests to GAO. (NASA supplements paragraphs (a), (b), (c), and (f))

The Associate Administrator for Procurement is the sole authority for deciding whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part and other guidance provided by NASA Headquarters.

(a)(2) The Headquarters Office of Procurement (Code HS) shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to Code HS, the Headquarters Office of the General Counsel (Code GK), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to Code GK within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except the actions defined in paragraph (a)(3)(ii) (*a*) and (*b*) are not required if already accomplished:

(*a*) Send a copy of the protest file index to Code GK within 10 days of receipt of the request.

(*b*) Send a copy of the protest file to Code GK within 15 days of receipt of the request.

(*c*) With Code GK concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iv) Code GK shall submit the protest file to GAO.

(4)(i) Code GK shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) The Associate Administrator for Procurement (Code HS) is the approval authority for contract award.

(c)(1) The contracting officer shall consult Code HS before terminating a protested contract.

(2) The Associate Administrator for Procurement (Code HS) is the appproval authority for authorizing contract performance.

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to Code GK within 6 days of issuance of the GAO decision.

[61 FR 55771, Oct. 29, 1996, as amended at 63 FR 32763, June 16, 1998; 64 FR 5621, Feb. 4, 1999]

1833.106 Solicitation provision and contract clause. (NASA supplements paragraph (a))

(a) The contracting officer shall be the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233–2.

1833.106–70 Solicitation provision.

Contracting officers shall insert the provision at 1852.233–70 in all solicitations.

[62 FR 11108, Mar. 11, 1997]

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Headquarters Officers of Inspector General (Code W) and the General Counsel (Code G).

1833.210 Contracting officer's authority.

See NASA Policy Directive 2010.2 on use of Alternative Dispute Resolution.

[63 FR 14041, Mar. 24, 1998]

1833.211 Contracting officer's decision. (NASA supplements paragraph (a))

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for

hearing appeals of contracting officer final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041–3208), and include a notification that the Board's operating procedures appear in Title 48, Code of Federal Regulations, Chapter 2, Appendix A.

1833.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

Subpart 1834.0—General

Sec.
1834.003 Responsibilities.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4467, Jan. 30, 1997, unless otherwise noted.

Subpart 1834.0—General

1834.003 Responsibilities. (NASA supplements paragraph (a))

(a) NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and FAR Part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, ''Program/Project Management,'' and NASA Procedures and Guidance (NPG) 7120.5, '' NASA Program and Project Management Processes and Requirements''.

[62 FR 4467, Jan. 30, 1997, as amended at 64 FR 56093, Oct. 21, 1998]

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1835.003 Policy.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.016 Broad agency announcements.
1835.016–70 Foreign participation under broad agency announcements (BAAs).
1835.016–71 NASA Research Announcements.
1835.016–72 Foreign participation in NRA proposals.
1835.070 NASA contract clauses and solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4469, Jan. 30, 1997, unless otherwise noted.

1835.003 Policy.

See NPG 5800.1, Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

1835.015 Contracts for research with educational institutions and nonprofit organizations. (NASA supplements paragraph (a))

(a)(1)(iv) The research contract shall include a requirement that the contractor obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator or project leader.

1835.016 Broad agency announcements. (NASA supplements paragraphs (a) and (c))

(a)(i) The following forms of broad agency announcements (BAAs) are authorized for use:

(A) Announcements of Opportunity (see 1872).

(B) NASA Research Announcements (see 1835.016–71).

(C) Other forms of announcements approved by the Associate Administrator for Procurement (Code HS).

(ii) Other program announcements, notices, and letters not authorized by paragraph (a)(i) of this section shall not be used to solicit proposals that may result in contracts.

(iii) Draft or final versions of any form of BAA that directly or substantially supports a program subject to NASA Procedures and Guidelines (NPG) 7120.5 shall not be released unless—

(A) All applicable NPG 7120.5 required documentation (see 1804.7301(b)(2)(i)) is current and has been approved (e.g., Formulation Authorization Document, Program Commitment Agreement, Program Plan, or Project Plan); or

(B) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

(c) BAAs may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and

open competition is approved under FAR 6.304.

[62 FR 4469, Jan. 30, 1997, as amended at 64 FR 14641, Mar. 26, 1999; 64 FR 48561, Sept. 7, 1999]

1835.016–70 Foreign participation under broad agency announcements (BAAs).

(a) *Policy*. (1) NASA seeks the broadest participation in response to broad agency announcements, including foreign proposals or proposals including foreign participation. NASA's policy is to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs). NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, cooperative research efforts are implemented via international agreements between NASA and the sponsoring foreign agency or funding/sponsoring institution under which the parties agree to each bear the cost of discharging their respective responsibilities.

(2) In accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(3) NASA funding may not be used for subcontracted foreign research efforts. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted.

(b) *Procedure*. When a foreign proposal or a U.S. proposal with foreign participation is received in response to a BAA, the NASA sponsoring office shall determine whether the proposal conforms to the no-exchange-of-funds policy in 1835.016–70(a).

(1) If the proposal conforms to the policy in 1835.016-70(a), the NASA sponsoring office shall evaluate the proposal and make selection in accordance with 1835.016–71(d). In conjunction with the notification of successful foreign proposers, the NASA sponsoring office shall notify the Headquarters Office of External Relations, Code I. Code I will negotiate the agreement with the sponsoring foreign agency or funding institution for the proposed participation.

(2) If the proposal does not conform to the policy in 1835.016–70(a), the NASA sponsoring office shall:

(i) Determine whether the proposal merits further consideration;

(ii) If further consideration is warranted, refer the proposal to Code I; and

(iii) Complete the evaluation of the proposal. However, no notification of selection, whether tentative or final, shall be made without Code I approval.

(3) Notification to Code I required by paragraphs (b)(1) and (b)(2)(ii) of this section, shall address the items contained in 1872.504(c), and shall be coordinated through the Office of Procurement, Code HS.

[64 FR 48561, Sept. 7, 1999]

1835.016–71 NASA Research Announcements.

(a) Scope. An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An NRA shall not be used when the requirement is sufficiently defined to specify an end product or service.

(b) Issuance. (1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). The NRA approval authority shall designate the selection official.

(2) The selecting official shall assure that the NRA is synopsized prior to issuance in accordance with FAR 5.201 and 1805.201. The synopsis shall be brief, and the technical section describing the area of interest should not exceed 50 words.

(3) If a Headquarters-generated NRA may result in awards by a NASA field installation, the issuing office shall notify the installation procurement officer and provide a copy of the NRA.

(4) The selecting official is responsible for the preparation and distribution of the NRA.

(5) NRAs normally shall remain open for at least 90 days.

(c) Content. The NRA shall consist of the following sections and items. The entire package shall be provided in response to requests.

(1) Cover. The cover shall display:

(i) ''OMB Approval Number 2700–0087'' in the upper right corner.

(ii) Title.

(iii) ''NASA Research Announcement Soliciting Research Proposals for the Period Ending

(iv) NRA number.

(v) Official address for the office issuing the NRA.

(2) Summary and Supplemental Information. (i) The Summary and Supplemental Information should not exceed two pages and shall include:

(A) Title and NRA number.

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals.

(C) Address for submitting proposals.

(D) Number of copies required.

(E) Selecting official's title.

(F) Names, addresses, and telephone numbers for the technical and contracting points of contact.

(G) The following statement when the NRA is to be issued before funds are available:

Funds are not currently available for awards under this NRA. The Government's obligation to make award(s) is contingent upon the availability of appropriated funds from which payment can be made and the receipt of proposals that NASA determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(3) Technical Description. The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest. Specifications containing detailed statements of work should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) Instructions for Responding to NASA Research Announcements. The NRA shall contain instructions as stated in 1852.235–72 (see 1835.070(c)).

(d) Receipt of proposals, evaluation, and selection. (1) Proposals shall be protected as provided in FAR 15.608, FAR 15.609, and 1815.609–70.

(2) Late proposals and modifications shall be treated in accordance with 1815.208.

(3) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve evaluation by an in-house specialist, a specialist outside NASA, or both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in 1815.207. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror only for the purpose of clarification (as defined in FAR 15.306), or to understand the meaning of some aspect of the proposal that is not clear, or to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(4) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(5) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, the selecting official may request revisions from the offeror or request the contracting officer to implement them during negotiations with the successful offeror(s). The changes

shall not transfer information from one offeror's proposal to another offeror (see FAR 15.306(e)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(6) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(7) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under FAR 15.5, with the participation of a contracting officer.

(8) The selecting official shall forward to the contracting officer the following information:

(i) A copy of the NRA (This requirement may be waived in the case of a grant award at the discretion of the grant officer);

(ii) The results of the technical evaluation, including the total number of proposals received, the selection statement, and the listing of proposal(s) selected for funding (These requirements may be waived in the case of a grant award at the discretion of the grant officer if the purchase request specifically references the NRA number and states that the proposal forwarded for funding was selected under the NRA.);

(iii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iv) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(v) A procurement request;

(vi) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewer's comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vii) A copy of the selected proposal as originally submitted, any revisions, and any correspondence from the successful offeror.

(9) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted.

(10) The selecting official may provide each offeror whose proposal was selected for negotiation a notification stating:

(i) The proposal has been selected for negotiation;

(ii) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(iii) Any costs incurred by the offeror in anticipation of an award are at the offeror's risk.

(e) Award. The contracting officer shall choose the appropriate award instrument. If a contract is selected, the contracting officer shall——

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, anticipated effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms. If FAR 52.219–9, Small Business Subcontracting Plan, is required for the resultant contract, request the offeror to provide a subcontracting plan.

(4) Conduct negotiations in accordance with FAR subparts 15.3 and 15.4, as applicable;

(5) Award a contract; and

(6) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards.

(f) Cancellation of an NRA. when program changes, program funding, or any other reasons require cancellation of an NRA, the office issuing the NRA shall notify potential offerors by using the mailing list of the NRA.

[62 FR 4469, Jan. 30, 1997, as amended at 62 FR 14017, Mar. 25, 1997; 63 FR 9967, Feb. 27, 1998. Redesignated and amended at 64 FR 48561, Sept. 7, 1999; 65 FR 12485, Mar. 9, 2000; 65 FR 46628, July 31, 2000]

1835.016–72 Foreign participation in NRA proposals.

Foreign proposals or U.S. proposals with foreign participation shall be treated in accordance with 1835.016–70. Additional guidelines applicable to foreign proposers are contained in the provision at 1852.235–72, Instructions for responding to NASA Research Announcements.

[64 FR 48561, Sept. 7, 1999]

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer must insert the clause at 1852.235–70, Center for AeroSpace Information—Final Scientific and Technical Reports, in all research and development contracts, interagency agreements, and in cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offer or of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer shall ensure that the provision at 1852.235–72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions may be supplemented, but only to the minimum extent necessary.

[62 FR 4469, Jan. 30, 1997, as amended at 65 FR 45307, July 21, 2000]

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.
1836.203 Government estimate of construction costs.
1836.209 Construction contracts with architect-engineer firms.
1836.213 Special procedures for sealed bidding in construction contracting.
1836.213–3 Invitations for bids.
1836.213–4 Notice of Award. (NASA supplements paragraph (e))
1836.213–370 Additive and deductive items.

Subpart 1836.5—Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.
1836.602–1 Selection criteria.
1836.602–2 Evaluation boards.
1836.602–4 Selection authority.
1836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
1836.602–70 Selection of architect-engineers for master planning.
1836.603 Collecting data on and appraising firms' qualifications.
1836.605 Government cost estimate for architect-engineer work.

Subpart 1836.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

Subpart 1836.70—Partnering

1836.7001 Definition.
1836.7002 General.
1836.7003 Policy.
1836.7004 NASA solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 62 FR 4471, Jan. 30, 1997, unless otherwise noted.

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.(NASA supplements paragraph (c))

(c)(i) If the acquisition is by sealed bidding, the contracting officer shall file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall read the estimate, and record it in the same detail as the bids.

(ii) If the acquisition is by negotiation, the contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

1836.209 Construction contracts with architect-engineer firms.

(1) Except as indicated in paragraph (2) of this section, the Associate Administrator for Procurement (Code HS) is the approval authority.

(2) A construction contract may be awarded to the firm that designed the project (or its subsidiaries or affiliates) if the contract is awarded on the basis of performance specifications for the construction of a facility, and it requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(3) In no case shall the firm that prepared the drawings and specifications supervise and inspect, on behalf of the Government, the construction of the facility involved.

1836.213 Special procedures for sealed bidding in construction contracting.

[62 FR 36721, July 9, 1997]

1836.213–3 Invitations for bids.

[62 FR 36721, July 9, 1997]

1836.213–4 Notice of Award. (NASA supplements paragraph (e))

(e) Contract delivery or performance schedules, commencement of work, or notices to proceed shall not be expressed in terms of a notice of award. (See 1814.408–1).

[62 FR 36721, July 9, 1997]

1836.213–370 Additive and deductive items.

When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for a first or base bid item covering the work generally as specified and one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the contracting officer, before the opening of bids, shall record in the contract file the amount of funds available for the project and determine the low bidder and the items to be awarded in accordance with the provision at 1852.236–71, Additive or Deductive Items.

[62 FR 36721, July 9, 1997. Redesignated at 64 FR 5621, Feb. 4, 1999]

Subpart 1836.5—Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 1852.236–71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236–72, Bids with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

(c) The contracting officer shall insert the clause at 1852.236–73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

(d) The contracting officer shall insert the provision at 1852.236–74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602–1 Selection criteria. (NASA supplements paragraph (a))

(a)(2) The evaluation of specialized experience and technical competence shall be limited to the immediately preceding ten years.

(4) The evaluation of past performance shall be limited to the immediately preceding ten years.

(7) The architect-engineer selection board may also establish evaluation criteria regarding the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

1836.602–2 Evaluation boards. (NASA supplements paragraph (a))

(a) Installations shall establish an architect-engineer selection board to be composed of the selection authority and at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an official from the requiring office; if appropriate, a technical official familiar with any unique subject matter critical to the requirement; and a procurement official (a contracting officer, if feasible) as an ad hoc advisor to the board. Where appropriate, the procurement official may serve as a voting member. Non-Government employees shall not be appointed as voting members.

1836.602–4 Selection authority. (NASA supplements paragraph (a))

(a) The selection authority shall be appointed in accordance with installation procedures.

1836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The procedures at FAR 36.602–5 (a) or (b) may be used at the discretion of the selection authority.

1836.602–70 Selection of architect-engineers for master planning. (NASA supplements paragraphs (a) and (b))

(a) *Definition of master plan.* A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.*

(1) Selection of an Architect-Engineer for the development of a master plan in connection with the establishment of a new NASA activity or installation shall be made by the Associate Administrator having institutional responsibility. The report of the architect-engineer selection board will be concurred in at NASA Headquarters by the Associate Administrator for Management Systems and Facilities, the Associate Administrator for Procurement, the Chief Financial Officer, and the General Counsel.

(2) The Associate Administrator for Management Systems and Facilities shall be responsible for the architect-engineer selection board report required by FAR 36.602–3(d) before presentation to the Associate Administrator having institutional responsibility.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602–2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.605 Government cost estimate for architect-engineer work. (NASA supplements paragraph (b))

(b) The contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

Subpart 1836.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services. (NASA supplements paragraph (a))

(a)(i) Instructions for completing Standard Form 252, Architect-Engineer Contract, are as follows:

(a) Block 5-Project Title and Location. Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in the contract's specification/work statement and identify the location of the more detailed description in Block 10.

(b) Block 6-Contract For (General description of services to be provided). Include a brief description of the services and state that the are fully set out in the specification/work statement. Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be acquired, clearly specify the date by which they must be completed and add a statement that the Government may extend the period for their performance as provided in the Changes clause of the contract.

(c) Block 7-Contract Amount. If the contract is for both design and supervision and inspection services, set out the amounts for each effort separately.

(ii) The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of them inserted in the contract's specification/work statement. The statement should clearly and concisely set forth the nature and extent of the services and include any special services, such as the nature and extent of subsurface exploration prior to designing foundations. A similar statement of supervision and inspection services should be inserted in the specification/work statement if supervision and inspection services are to be acquired.

Subpart 1836.70—Partnering

SOURCE: 63 FR 44170, Aug. 18, 1998, unless otherwise noted.

1836.7001 Definition.

Partnering means a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

1836.7002 General.

(a) The establishment of a partnering environment usually leads to higher quality products completed more quickly at lower overall costs and with fewer accidents and litigation.

(b) The use of partnering is encouraged as it has been shown to reduce the average contract cost and schedule growth and to reduce contract claims and litigation.

(c) Partnering is a voluntary contract relationship within the management process that is not to be used to unofficially alter terms of the contract.

1836.7003 Policy.

(a) Partnering should be used on a contract when the contracting officer, in coordination with the project manager, determines that the benefits to be achieved from its use are expected to be greater than the costs.

(b) In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:

(1) The estimated dollar value of the contract;

(2) The complexity of the work to be performed;

(3) The contemplated length of the contract; and

(4) The estimated costs to be incurred in conducting the partnership development and team building initial and follow-up workshops.

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236–75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined in accordance with 1836.7003 that the benefits to be derived from partnering exceed the costs.

PART 1837—SERVICE CONTRACTING

Subpart 1837.1—Service Contracts—General

Sec.

1837.101 Definitions.
1837.104 Personal services contracts.
1837.110 Solicitation provisions and contract clauses.
1837.110–70 NASA solicitation provision and contract clauses.
1837.170 Pension portability.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy.
1837.204 Guidelines for determining availability of personnel.

Subpart 1837.70—Acquisition of Training

1837.7000 Acquisition of off-the-shelf training courses.
1837.7001 Acquisition of new training courses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4472, Jan. 30, 1997, unless otherwise noted.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.104 Personal services contracts. (NASA supplements paragraph (b))

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA ''to obtain services as authorized by Section 3109 of Title 5, United States Code.'' It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPD 3000.1, Management of Human Resources.

[62 FR 4472, Jan. 30, 1997, as amended at 64 FR 12485, Mar. 9, 2000]

1837.110 Solicitation provisions and contract clauses.

1837.110–70 NASA solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237–71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

[62 FR 4472, Jan. 30, 1997, as amended at 62 FR 36721, July 9, 1997; 62 FR 58688, Oct. 30, 1997]

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237–71, Pension Portability, (see 1837.110–70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy. (NASA supplements paragraph (c))

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NPD 3000.1, Management of Human Resources).

[62 FR 4472, Jan. 30, 1997, as amended at 64 FR 51079, Sept. 21, 1999]

1837.204 Guidelines for determining availability of personnel. (NASA supplements paragraphs (a), (b), (c), and (e))

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Associate Administrator for Procurement (Code HS) is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

Subpart 1837.70—Acquisition of Training

1837.7000 Acquisition of off-the-shelf training courses.

The Training Act of 1958 (5 U.S.C. 4101 et seq.) may be used as the authority for training of NASA employees by, in, or through non-Government off-the-shelf training courses which are available to the public. These include established university catalog courses or commercial course offerings that are offered to the general public at catalog or market prices.

1837.7001 Acquisition of new training courses.

The acquisition of a new training course that must be developed to fulfill a specific NASA need shall be conducted in accordance with the FAR and the NFS.

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1829.1—General

Sec.
1839.105 Privacy.
1839.107 Contract clause.
1839.107–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 62 FR 4473, Jan. 30, 1997, unless otherwise noted.

Subpart 1839.1—General

1839.105 Privacy.

See 1804.470.

1839.107 Contract clause.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

1839.107–70 NASA contract clause.

(a)(1) The contracting officer shall insert the clause substantially as stated at 1852.239–70, Alternate Delivery Points, in solicitations and contracts for information technology when:

(i) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities; and

(ii) Delivery is F.O.B. destination to the contracting activity.

(2) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1840 [RESERVED]

PART 1841—ACQUISITION OF UTILITY SERVICES

Subpart 1841.2—Acquiring Utility Services

Sec.
1841.203 GSA assistance.
1841.205 Separate contracts.
1841.205–70 Authorization for acquisition of wellhead natural gas.

Subpart 1841.3—Requests for Assistance

1841.301 Requirements.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.
1841.501–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4474, Jan. 30, 1997, unless otherwise noted.

Subpart 1841.2—Acquiring Utility Services

1841.203 GSA assistance. (NASA supplements paragraph (a))

(a) Before soliciting technical assistance, technical personnel shall contact the Headquarters Environmental Management Division (Code JE).

1841.205 Separate contracts.

1841.205–70 Authorization for acquisition of wellhead natural gas.

(a) Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the acquisition of supplies rather than the acquisition of public utility services described in FAR Part 41. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 41.204.

(b) GSA provides assistance to Federal agencies in the acquisition of natural gas wellhead supplies. Contracting officers may obtain assistance from GSA in the acquisition of wellhead natural gas by contacting GSA at the address specified in FAR 41.301(a).

Subpart 1841.3—Requests for Assistance

1841.301 Requirements. (NASA supplements paragraph (a))

(a) Procurement officers shall submit requests for delegation of contracting authority directly to the cognizant GSA regional office after coordinating with the cognizant center technical office.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention. (NASA supplements paragraph (b))

(b) A copy of all correspondence with GSA shall be provided to the Headquarters Office of Procurement (Code HS) at the time of its submittal to the GSA regional office.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

1841.501–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.241–70, Renewal of Contract, in solicitations and contracts for utility services if it is desirable that the utility service be provided under the same terms and conditions for more than 1 year.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1842.1—Contract Audit Services

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Subpart 1842.74—Earned Value Management

1842.7401 Earned Value Management Systems (EVMS).
1842.7402 Solicitation provisions and contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14017, Mar. 25, 1997, unless otherwise noted.

Subpart 1842.1—Contract Audit Services

1842.101 Contract audit responsibilities.

(a)(i) The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. A–133, those with Canadian contractors, and those for which NASA will perform audits.

(ii) Cross-servicing arrangements are the responsibility of the Headquarters Office of External Relations (Code ID).

Contracting officers should direct questions to the Headquarters Office of Procurement (Code HK).

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 3652, Jan. 26, 1998]

1842.102 Assignment of contract audit services.

1842.102–70 Review of administration and audit services.

(a) NASA installations shall assess their delegations to DOD semiannually to determine changes in delegation patterns that could (1) result in significant changes in DOD manpower requirements or (2) have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizable new acquisitions should be considered in the assessment.

(b) A summary, including a negative summary, of the Center's assessment shall be submitted by the procurement officer to the Headquarters Office of Procurement (Code HK) by not later than January 15 and June 15 of the fiscal year. The summary shall include—

(1) A description of the change in work requirements or delegation pattern;

(2) The estimated duration of the impact;

(3) The results of discussions with affected DOD contract administration offices including agreement and disagreements on the predicted impact on DOD in terms of changes in manpower requirements or other costs; and

(4) Any other significant impact on DOD or NASA resources or contract performance risk.

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 3652, Jan. 26, 1998]

1842.170 Assignment of NASA personnel at contractor plants.

(a)(1) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval with the concurrence of the Associate Administrator for Procurement (Code HS). The following supporting information shall be forwarded with the request to make the assignment:

(i) A statement of the special circumstances that necessitate the assignment.

(ii) The contract administration serves to be performed.

(iii) A summary of any discussions held with the cognizant contract administration organization.

(iv) A staffing plan covering three years or such shorter period as may be appropriate.

(2) The provisions of this paragraph (a) do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel.

(c) When a NASA resident office, including any assigned technical personnel, and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify

the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel will be involved in any aspect of contract administration.

Subpart 1842.2—Contract Administration Services

1842.202 Assignment of contract administration. (NASA supplements paragraphs (b) and (d))

(b) Withholding normal functions. (i) The following functions are normally retained by the contracting office.

(A) Approval of the final voucher (FAR 42.302(a)(7)).

(B) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(C) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(D) Contract payment (FAR 42.302(a)(13)).

(E) Execution of supplement agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(F) Executive of supplemental agreements definitizing change orders (see FAR 42.302(b)(1)).

(G) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted using NASA Form 1432 (FAR 42.302(a)(23)).

(H) Consent to placement of subcontracts under FAR 42.302(a)(51). (See 1844.202–1(a)).

(d) Transmittal and documentation. In addition to the instructions at FAR 42.202(d) (1) through (4), contracting officers shall—

(i) Send delegations to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DLAH 4105.4).

(ii) At time of contract award, prepared and forward NASA Form 1430, Letter of Contract Administration Delegation, General, to the contract administration office. NASA Form 1430A, Letter of Contract Administration, Special Instructions, will supplement the NASA Form 1430, to modify previously delegated functions and provide additional or particular information considered necessary to ensure clear understanding of all delegated functions.

(iii) Forward NASA Form 1431, Letter of Acceptance of Contract Administration, with each NASA Form 1430 or 1430A. Contracting officers shall use the returned NASA Form 1431 as contract file documentation that the delegation has been accepted, modified or rejected by the contract administration office and as a reference for points of contract for each of the functional areas delegated.

(iv) Use NASA Form 1433, Letter of Audit Delegation, to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(A) *Audit office:* One copy of the contract and three NASA Forms 1433. When the Department of Health and Human Services is designated as the audit office, item 12 on NASA Form 1433 shall be marked ''Not applicable.''

(B) *Contractor:* One NASA Form 1433.

(C) *Cognizant NASA fiscal or financial management office:* One NASA Form 1433.

(v) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(vi) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of

the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

[62 FR 14017, Mar. 25, 1997, as amended at 64 FR 51079, Sept. 21, 1999]

1842.202–70 Retention of contract administration. (NASA supplements paragraph (a))

(a) The assignment of contract administration is optional for the following contracts:

(1) Research and development study contracts not involving deliverable hardware or Government furnished property.

(2) Contracts with delivery schedules for 90 days or less.

(3) Purchase orders without Government source inspection requirements.

(4) Contracts requiring only on-site performance.

(5) Contracts requiring work in the vicinity of the awarding center where DOD contract administration services are not reasonably available.

[62 FR 14017, Mar. 25, 1997. Redesignated and amended at 63 FR 15320, Mar. 31, 1998]

1842.270 Contracting officer technical representative (COTR) delegations.

(a) The cognizant contracting officer may appoint a qualified Government employee to act as their representative in managing the technical aspects of a particular contract. If necessary, the contracting officer may appoint an alternate COTR to act during short absences of the COTR. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses training, qualifications and experience commensurate with the duties and responsibilities to be delegated and the nature of the contract.

(b) NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to appoint COTRs. A COTR's duties and responsibilities may not be redelegated by the COTR and the COTR may be held personally liable for unauthorized acts. However, this does not prohibit the COTR from receiving assistance for the purpose of monitoring contractor progress and gathering information. When an individual is appointed as a COTR on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 will be used to appoint an alternate COTR.

(c) A COTR delegation remains in effect throughout the life of the contract unless canceled in writing by the cognizant contracting officer or at any level above that contracting officer. The contracting officer may modify the delegation only by issuance of a new delegation canceling and superseding the existing delegation.

(d) A COTR shall not be authorized to initiate procurement actions or in any way cause a change to the contract or increase the Government's financial obligations. However, delegations may be made to construction contract COTRs to sign emergency on-site change orders with an estimated value not to exceed the value specified in writing by the contracting officer in the NASA Form 1634 but in no event to exceed $25,000.

(e) Each COTR shall acknowledge receipt and accept the delegation by signing the original delegation letter. The original of the COTR delegation letter shall be filed in the applicable contract file. Copies of the signed COTR delegation letter shall be distributed to the COTR, the contractor, and each cognizant contract administration office. Acknowledgment and distribution for terminations of COTR delegations and COTR delegations which revise authority, duties and responsibilities shall follow the same rules.

(f)(1) Mandatory training for COTRs and their alternates shall include the following core topic areas:

(i) Contracting authority and contract modifications (including non-personal services and inherently governmental functions);

(ii) Inspection and surveillance;

(iii) Changes and performance-based contracting;

(iv) Contract financial and property management (including ''Limitation of Cost'' clause, Anti-Deficiency Act, ''Limitation of Funds'' clause); and

(v) Disputes.

(2) Procurement officers are responsible for assuring that the course(s) utilized by their center address the mandatory core topics in sufficient detail for the purpose of COTR training. Procurement officers may accept the following training alternative(s) in satisfaction of comparable requirement(s) specified in paragraph (f)(1) of this section:

(i) Another center's COTR training; or

(ii) Annual ethics training.

(g) The contracting officer shall verify that the COTR has received the mandatory training before signing NASA Form 1634. If an urgent need arises for the appointment of a COTR and no trained and otherwise qualified individual is available, then the procurement officer may make a temporary COTR appointment not to exceed six months. Temporary appointments must be so identified and clearly reflect the appointment expiration date.

(h) No technical direction may be issued by a COTR relative to performance-based contract requirements or when serving under a temporary appointment.

[62 FR 14017, Mar. 25, 1997, as amended at 64 FR 19928, Apr. 23, 1999; 65 FR 12485, Mar. 9, 2000]

1842.271 NASA clause.

Insert the clause at 1852.242–70, Technical Direction, when paragraph 3(m) of the NASA Form 1634 specifically authorizes a COTR to issue technical direction.

Subpart 1842.3—Contract Administration Office Functions

1842.302 Contract administration functions. (NASA supplements paragraph (a))

(a) In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria and conformity with ANSI/EIA Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMC.

[64 FR 10574, Mar. 5, 1999]

Subpart 1842.5—Postaward Orientation

1842.503 Postaward conferences. (NASA paragraphs (1) and (2))

(1) A postaward conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $10,000,000;

(ii) Contract performance is required at or near a NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation; or

(iv) Complex contract management issues are expected, particularly risk management areas identified during program and acquisition planning, e.g., significant or unusual mission success, technical, cost, schedule, safety, security, occupational health, environmental protection, and export control risks.

(2) Procurement officer approval is required to waive a post-award planning conference for contracts meeting any of the criteria in paragraph (1) of this section. The request for procurement officer approval to waive a post-award conference shall address action taken and planned to ensure effective communication with the contract administration office during the performance of the contract.

[62 FR 14017, Mar. 25, 1997, as amended at 65 FR 37060, June 13, 2000]

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

1842.705–1 Contracting officer determination procedure. (NASA supplements paragraph (a))

(a) Applicability and responsibility. (i) Since many NASA contractors are under DOD's final overhead rate determination procedure, NASA's policy is to participate jointly with DOD for those companies where NASA has a

major financial interest. The NASA participant shall be a representative from that installation having the predominance of NASA work.

(ii) When NASA has been assigned the final indirect cost rate determination authority, settlement of indirect costs shall be conducted by the cognizant NASA contracting officer (normally from the installation providing the preponderance of NASA funding).

1842.708 Quick–closeout procedure.

(a)(2)(ii) The 15 percent parameter does not apply to NASA contracts. Instead, perform a risk analysis that takes into consideration the contractor systems identified in FAR 42.708(a)(2)(ii), as well as the concerns of the cognizant contract auditor, and any other pertinent information.

[62 FR 36228, July 7, 1997]

1842.708–70 NASA quick-closeout procedures.

After a decision is made that the use of quick closeout is appropriate, the contracting officer shall:

(a) Obtain a written agreement from the contractor to participate in the quick-closeout process under FAR 42.708 for the selected contract(s).

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved.

(c) Notify the cognizant audit activity in writing, identify the contract(s), and request: (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(e) Establish final indirect cost rates using one of the following rates:

(1) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(2) through (e)(6) of this section.

(2) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(3) through (e)(6) of this section.

(3) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.

(4) The contractor's negotiated billing rates, if less than paragraphs (e)(5) or (e)(6) of this section.

(5) The previous year's final rates.

(6) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established.

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

(g) For those contracts where the indirect cost rate negotiation function was delegated or falls under the cognizance of another agency, send a copy of the agreement to that office.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrance. (NASA supplements paragraph (b))

(b) Auditor receipt of vouchers. (1) NASA has designated the contract auditor as the contracting officer's representative for—

(A) Reviewing vouchers received directly from contractors;

(B) Approving vouchers for provisional payment and sending them to the disbursing office;

(C) Reviewing completion/final vouchers and sending them to the designated contracting officer for approval.

(D) Authorizing direct submission of interim vouchers for provisional payment to disbursing offices for contractors with approved billing systems.

(2)(A) When contract costs are questioned, the auditor shall prepare and send to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved.

(B) After coordination with other NASA and Federal agency contracting officers administering contracts with the same contractor under which a NASA Form 456 or a DCAA Form 1 has been issued for the same items of cost, the NASA contracting officer shall take one of the following actions:

(a) Assign a notice number and sign the NASA Form 456.

(b) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(c) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being signed, and process the contractor's claim for payment.

(C) When more than one NASA contract is affected by a notice, the NASA contracting officer with the largest amount of contract dollars affected is responsible for coordination of the NASA Form 456 with the other contracting officers, including those of other Federal agencies, listed in the notice.

(D) An original and three copies (which includes two acknowledgment copies, one each for return to the contracting officer and the auditor) of the NASA Form 456 shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the Standard Form 1034 and each copy of the Standard Form 1034A on which the deduction for the suspension/disapproval is made.

(E)(a) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to the current and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(b) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract unless those contracts contain a ''no set-off'' provision. If a set-off is affected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

[62 FR 14017, Mar. 25, 1997, as amended at 62 FR 58688, Oct. 30, 1997]

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1203 Processing agreements. (NASA supplements paragraphs (b) and (h))

(b) The installation shall immediately notify the Headquarters Office of Procurement (Code HS) of the request to execute a novation (successor-in-interest) or change-of-name agreement.

(h) The contracting officer shall forward one copy of the agreement to the Code HS.

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 32764, June 16, 1998]

1842.1203–70 DOD processing of novation and change-of-name agreements on behalf of NASA.

(a) Copies of novation and change-of-name agreements executed by DOD on behalf of NASA are maintained by the Headquarters Office of Procurement (Code HS).

(b) Code HS is the Agency point of contact for issues related to proposed novation agreements. With the concurrence of Code HS, an installation may execute a separate agreement with the contractor.

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 32764, June 16, 1998]

Subpart 1842.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1842.1305 Contract clauses. (NASA supplements paragraph (b))

(b) FAR 52.242–15, Stop-Work Order, shall not be used in solicitations or contracts for research performed by educational or other nonprofit institutions.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies. (NASA supplements paragraph (a))

(a) NASA personnel shall also report discrepancies and adjust claims for loss of and damage to Government property in transit in accordance with NPG 6200.1, NASA Transportation and General Traffic Management.

[62 FR 14017, Mar. 25, 1997, as amended at 65 FR 12485, Mar. 9, 2000]

Subpart 1842.15—Contractor Performance Information

SOURCE: 63 FR 42756, Aug. 11, 1998, unless otherwise noted.

§ 1842.1501 General.

Communications with contractors are vital to improved performance and this is NASA's primary objective in evaluating past performance. Other objectives include providing data for both future source selections and for reports under NASA's Contractor Performance Assessment Program (CPAP). While the evaluations must reflect both shortcomings and achievements during performance, they should also elicit from the contractors their views on impediments to improved performance emanating from the Government or other sources.

1842.1502 Policy.

(a) Within 60 days of every anniversary of the award of a contract having a term exceeding one year, contracting officers must conduct interim evaluations of performance on contracts subject to FAR subpart 42.15 and this subpart. On such contracts, both an interim evaluation covering the last period of performance and a final evaluation summarizing all performance must be conducted. However, interim past performance evaluations are optional for SBIR/STTR Phase II, procurements.

[65 FR 45308, July 21, 2000]

§ 1842.1503 Procedures (NASA Supplement paragraphs (a) and (b)).

(a) The contracting officer shall determine who (e.g., the technical office or end users of the products or services) evaluates appropriate portions of the contractor's performance. The evaluations are subjective in nature. Nonetheless, the contracting officer, who has responsibility for the evaluations, shall ensure that they are reasonable.

(b) NASA Form 1680, entitled, ''Evaluation of Performance,'' shall be used to document evaluations. This provides for a five-tiered rating (using the definitions for award fee evaluation scoring found in 1816.405–275) covering the following attributes: quality, timeliness, price or control of costs (not required for firm-fixed-price contracts or firm-fixed-price contracts with economic price adjustment), and other considerations. Evaluations used in determining award fee payments satisfy the requirements of this subpart and do not require completion of NASA Form 1680. In addition, hybrid contracts containing both award fee and non-award fee portions do not require completion of NASA Form 1680. Contracting Officers shall ensure that the Government discusses all evaluations with contractors and shall record the date and the participants on the evaluation form. Contracting officers shall sign and date the evaluation after considering any comments received from the contractor within 30 days of the contractor's receipt of the evaluation. If a contractor in its timely comments disagrees with an evaluation and requests a review at a level above the contracting officer, it shall be provided within 30 days. While the FAR forbids use of the evaluations for source selections more than three years after contract completion, they shall nevertheless be retained in the contract file as provided in FAR 4.8, Government Contract Files.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242–72, Observance of Legal Holidays, in contracts when work will be performed at a NASA installation.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when it is desired that contractor employees not have access to the installation during Government holidays. This alternate may be appropriately modified for fixed-price contracts.

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions. This alternate may be appropriately modified for fixed-price contracts.

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 32764, June 16, 1998; 65 FR 46628, July 31, 2000]

1842.7002 Travel outside of the United States.

The contracting officer shall insert the clause at 1852.242–71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

(a) Vouchers shall be submitted in accordance with the clause at 1852.216–87, Submission of Vouchers for Payment.

(b) The auditor shall retain an unpaid copy of the voucher.

(c) When a voucher submitted in accordance with the clause at 1852.216–87 contains one or more individual direct freight charges of $100 or more, an additional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the ''Completion Voucher,'' an additional copy shall be submitted for transmittal to the NASA contracting officer.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

(a) Contracting officer responsibilities. (1) Contracting officers must ensure contracts require cost reporting consistent with both policy requirements and project needs. Contracting Officers shall monitor contractor cost reports on a regular basis to ensure cost data reported is accurate and timely.

Adverse trends or discrepancies discovered in cost reports should be pursued through discussions with financial and project team members.

(2) Whenever cost performance threatens contract performance, contracting officers shall require corrective action plans from the contractors.

(b) Reporting requirements. (1) Use of the NASA Contractor Financial Management Reports, the NASA form 533 series, is required on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Contract value/scope	Period of performance	533M	533Q
$500K to $999K	1 year or more	Required	Optional.
$1,000,000 and over	Less than 1 year	Required	Optional.
$1,000,000 and over	1 year or more	Required	Required.

(2) When it is probable that a contract will ultimately meet the criteria in paragraph (b)(1) of this section through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract based on the estimated final contract value at the time of award.

(3) NF 533Q reporting may be waived by the contracting officer, with the concurrence of the center chief financial officer and cognizant project manager, for support service or task order contracts, when NF 533M reports and other data are sufficient to ensure accurate monthly cost accruals, evaluation of the contractor's cost performance, and forecasting of resource requirements.

(4) Where a specific contractual requirement differs from the standard system set forth in NPG 9501.2, NASA Contractor Financial Management Reporting, but is determined to be in the best interests of the Government and does not eliminate any of the data elements required by the standard NF 533 formats, it may be approved by the contracting officer with the concurrence of the center chief financial officer and the project manager. Such approval shall be documented and retained, with the supporting rationale, in the contract file.

(5) The contractor's internal automated printout reports may be substituted for the 533 reporting formats only if the substitute reports contain all the data elements that would be provided by the corresponding 533's. The contracting officer shall coordinate any proposed substitute with the installation financial management office.

(c) Contract requirements. (1) Reporting requirements, including a description of reporting categories, shall be detailed in the procurement request, and reports shall be required by inclusion of the clause prescribed in 1842.7202. The contract schedule shall include report addressees and numbers of copies. Reporting categories shall be coordinated with the center financial management office to ensure that data required for agency cost accounting will be provided by the reports. Reporting dates shall be in accordance with NPG 9501.2, except that earlier submission is encouraged whenever feasible. No due date shall be permitted which is later than the date by which the center financial management office needs the data to enter an accurate monthly cost accrual in the accounting system.

(2) The contractor shall be required to submit an initial report in the NF 533Q format, time phased for the expected life of the contract, within 30 days after authorization to proceed has been granted. NF 533M reporting will begin no later than 30 days after incurrence of cost. NF 533Q reporting begins with the initial report.

1842.7202 Contract clause.

The contracting officer shall insert the clause at 1852.242–73, NASA Contractor Financial Management Reporting, in solicitations and contracts when any of the NASA Form 533 series of reports is required from the contractor.

[62 FR 36721, July 9, 1997]

Subpart 1842.73—Audit Tracking and Resolution

1842.7301 NASA external audit follow-up system.

(a) This section implements OMB Circular No. A–50, NASA Policy Directive (NPD) 1200.1, and NASA Procedures and Guidelines (NPG) 1200.1, ''Management Accountability and Control, Audit Liaison, and Audit Follow-up'', which provide more detailed guidance. Recommendations for external audits (OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Institutions) shall be resolved by formal review and approval procedures analogous to those at 1815.406–171.

(b) The external audit followup system tracks up contract and OMB Circular No. A–133 audits where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but at a maximum, within 6 months of the date of the audit report.

(c)(1) The identification and tracking of contract audit reports under NASA cognizance are accomplished in cooperation with the DCAA.

(2) Identification and tracking of OMB Circular No. A–133 audit reports are accomplished in cooperation with the NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA Center having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify any significant audit findings.

(d)(1) All reportable contract audit reports are defined by Part 15, Section 6, of the DCAA Contract Audit Manual (CAM) shall be reported quarterly to the Headquarters Office of Procurement (Code HC); and

(2) Only OMB Circular No. A–133 audit reports involving the following shall be reported quarterly to Code HC:

(i) A significant management control issue; or

(ii) Questioned costs of $10,000 or more due to an audit finding (see Subpart E-Auditor, paragraph 510 of OMB Circular No. A–133).

(3) NASA contracting officers will maintain a dialogue with DOD Administrative Contracting Officers (ACO) who have been delegated activities on NASA contracts. A review will be conducted no less frequently than semiannually, and the status and disposition of significant audit findings will be documented in the contract file.

(e)(1) The terms ''resolution'' and ''disposition'' are defined in Appendix A of NPG 1200.1.

(2) The resolution and disposition of OMB Circular No. A–133 audits are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having a Governmentwide impact are the responsibility of the cognizant Federal agency responsible for oversight. For organizations subject to OMB Circular No. A–133, there is either a cognizant agency or an oversight agency. The cognizant agency is the Federal agency that provides the predominant amount of direct funding to the recipient organization unless OMB makes a specific cognizant agency for audit assignment. To provide for the continuity of cognizance, the determination of the predominant amount of direct funding will be based on the direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. When there is no direct funding, the Federal agency with the predominant indirect funding is to assume the oversight responsibilities. In cases where NASA is the cognizant or oversight Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the Center having the largest amount of direct funding, or, if there is no direct funding, the largest amount of indirect funding for the audited period. A copy of the memorandum dispositioning the findings shall be provided by each Center having resolution responsibility for the particular report to the Headquarters OIG office and Code HC.

[63 FR 3652, Jan. 26, 1998]

Subpart 1842.74—Earned Value Management

SOURCE: 64 FR 10574, Mar. 5, 1999, unless otherwise noted.

1842.7401 Earned Value Management Systems (EVMS).

When an offeror or contractor is required to provide an EVMS plan to the Government in accordance with NASA Policy Directive (NPD) 9501.3, Earned Value Management, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO) to obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

1842.7402 Solicitation provisions and contract clauses.

(a) When the Government requires Earned Value Management, the contracting officer shall insert:

(1) The provision at 1852.242–74, Notice of Earned Value Management System, in solicitations; and

(2) The clause at 1852.242–75, Earned Value Management System, in solicitations and contracts.

(b) The contracting officer shall insert the clause at 1852.242–76, Modified

Cost Performance Report, in solicitations and contracts requiring modified cost performance reporting (see NPD 9501.3, Earned Value Management).

(c) The contracting officer shall insert the provision at 1852.242–77, Modified Cost Performance Report Plans, in solicitations for contracts requiring modified cost performance reporting (see NPD 9501.3).

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.
1843.205 Contract clauses.
1843.205–70 NASA contract clauses.

Subpart 1843.70—Undefinitized Contract Actions

1843.7001 Definitions.
1843.7002 Policy.
1843.7003 Procedures.
1843.7004 Exceptions.
1843.7005 Definitization.

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.
1843.7102 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14022, Mar. 25, 1997, unless otherwise noted.

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243–1, Changes—Fixed Price; FAR 52.243–2, Changes—Cost Reimbursement; FAR 52.243–3, Changes—Time-and-Material or Labor-Hours; and FAR 52.243–4, Changes, the period within which a contractor must assert its rights to an equitable adjustment may be varied not to exceed 60 calendar days.

1843.205–70 NASA contract clauses.

(a)(1) The contracting officer may insert in contracts a clause substantially the same as 1852.243–70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract. A local format may be substituted for the MIL–STD–973 format.

(2) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer may insert a clause substantially as stated at 1852.243–72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

[62 FR 14022, Mar. 25, 1997, as amended at 63 FR 17339, Apr. 9, 1998]

Subpart 1843.70—Undefinitized Contract Actions

1843.7001 Definitions.

Undefinitized contract action (UCA) means a unilateral or bilateral contract modification or delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and their modifications are governed by subpart 1816.6.)

1843.7002 Policy.

Undefinitized contract actions shall be executed by contracting officers on an exception basis and shall be limited to the minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

1843.7003 Procedures.

(a) Issuance of undefinitized contract actions with a Government estimated

cost or price over $1,000,000 must be approved in writing by the Center Director. This approval authority is not delegable. Issuance of undefinitized contract actions with a Government estimated cost or price less than or equal to $1,000,000 shall also be minimized but may be approved on an exception basis in accordance with installation procedures.

(b) (1) Undefinitized contract actions exceeding $1,000,000 approved by the Center Director shall be issued as bilateral agreements setting forth a ceiling price or ''not to exceed'' estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the ''not to exceed'' estimated cost figure shall be non-fee bearing. The ceiling price or ''not to exceed'' estimated cost figures shall be separately identified in the UCA instrument from the pricing structure of the basic contract.

(2) The Center Director may waive the ceiling price or ''not to exceed'' estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than $1,000,000 and not excepted under subpart 1843.7004, a 180 day funding profile shall be obtained from the contractor prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than $1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

1843.7004 Exceptions.

(a) Exceptions to the requirement for Center Director approval for issuance of undefinitized contract actions are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modification resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modification to letter contracts.

(b) The contract file for any of the modifications in paragraph (a) of this section shall cite the exception and include complete supporting rational for its applicability.

1843.7005 Definitization.

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitive UCAs within 180 from date of issuance.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient

business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

1843.7102 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.243–71, Shared Savings, in all solicitations and contracts expected to exceed $1,000,000, except those awarded under FAR part 12, NRA and AO procedures, or the SBIR and STTR programs.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.2—Consent to Subcontracts

Sec.
1844.201 Consent and advance notification requirements.
1844.201–1 Consent requirements.
1844.202 Contracting officer's evaluation.
1844.202–1 Responsibilties.
1844.204 Contract clauses.
1844.204–70 NASA contract clause.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.
1844.302–70 DCMC-conducted contractor purchasing system reviews.
1844.302–71 NASA-conducted contractor purchasing system reviews.
1844.304 Surveillance.
1844.304–70 Contracting officer surveillance.
1844.305 Granting, withholding, or withdrawing approval.
1844.305–70 Review of CPSR reports.

AUTHORITY: 42 U.S.C. 2473(a)(1).

SOURCE: 62 FR 14023, Mar. 25, 1997, unless otherwise noted.

Subpart 1844.2—Consent to Subcontracts

1844.201 Consent and advance notification requirements.

1844.201–1 Consent requirements. (NASA supplements paragraph (a))

(a)(i) In determining special surveillance consent requirements, the contracting officer should consider specific subcontract awards, as well as any individual systems, subsystems, components, technologies, and services that should have contracting officer consent prior to being subcontracted.

(ii) For each planned contract award expected to exceed $1 million in total estimated value (inclusive of options), the contracting officer should consider such factors as the following to determine whether certain subcontracts require special surveillance:

(A) The degree of subcontract pricing uncertainties at the time of contract award;

(B) The overall quality of the contractor's approach to pricing subcontracts;

(C) The extent of competition achieved, or to be achieved, by the contractor in the award of subcontracts;

(D) Technical complexity and the criticality of specific supplies, services, and technologies on the successful performance of the contract; and

(E) The potential impact of planned subcontracts on source selection or incentive arrangements.

(iii) The contracting officer shall document results of the review in the contract file. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (a)(ii) of this section whenever the value of any subcontract resulting from the change order or modification is proposed to exceed the dollar threshold for obtaining cost or pricing data (see FAR 15.403–4(a)(1)) or is one of a number of subcontracts with a single subcontractor for the same or related supplies

or services that are expected cumulatively to exceed the dollar threshold for obtaining cost or pricing data.

(iv) In addition, any subcontract under a cost type prime contract shall be identified for special surveillance if consent was not provided at the time of contract award and cost or pricing data would be required in accordance with FAR 15.404–3(c).

[63 FR 43099, Aug. 12, 1998, as amended at 64 FR 5621, Feb. 4, 1999]

1844.202 Contracting officer's evaluation.

1844.202–1 Responsibilities. (NASA supplements paragraph (a))

(a) NASA contracting officers shall retain consent to subcontract authority unless delegation is approved in writing by the procurement officer.

1844.204 Contract clauses.

1844.204–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.244–70, Geographic Participation in the Aerospace Program, in all research and development solicitations and contracts of $500,000 or over that will be performed within the United States.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.

1844.302–70 DCMC-conducted contractor purchasing system reviews.

For contracts within their cognizance, NASA contracting officers shall be aware of purchasing system approval status and should become actively involved with the Defense Contract Management Command (DCMC) in the Contractor Purchasing System Review (CPSR) process. Involvement should include the following:

(a) Verifying that CPSRs are being conducted in accordance with FAR 44.302.

(b) Ensuring that purchasing system review specifically includes the business unit performing the NASA contract.

(c) Actively participating as a team member, or arranging NASA representation, on DCMC CPSRs to review areas of NASA-specific interest. At a minimum, such participation or representation shall be arranged when the DCMC CPSR review involves—

(1) Contractors with major NASA programs;

(2) Contractors' business units where the total dollar value of NASA contracts is substantial; or

(3) Any contractor system where the contracting officer has special concerns.

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMC CPSR team leader any areas of special emphasis regarding the contractor's purchasing system to ensure that the review is tailored to address any NASA concerns.

[62 FR 14023, Mar. 25, 1997, as amended at 62 FR 36721, July 9,1997]

1844.302–71 NASA-conducted contractor purchasing system reviews.

If a NASA activity is the cognizant contract administration officer, or after coordination with the cognizant DCMC CPSR office it is determined that a CPSR is required but cannot be accomplished by DCMC, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader:

(a) May use the DOD FAR Supplement, Contractor Purchasing System Review (CPSR) guidance, as a general guide to conducting the CPSR.

(b) May vary the scope of review depending on the contractor and contracts involved.

(c) Shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

1844.304 Surveillance.

1844.304–70 Contracting officer surveillance.

(a) In the period between complete CPSRs, NASA contracting officers shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of subcontract consent reviews. Other methods of surveillance, including periodic reviews of contractor purchasing records, may also be conducted. Contracting officers shall document the results of subcontract consent reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, the need for special reviews, and recommended areas of emphasis during future CPSRs.

1844.305 Granting, withholding, or withdrawing approval.

1844.305–70 Review of CPSR reports.

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers shall review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of purchasing system approval. Significant issues or significant conflicts with DOD CPSR results should be formally referred to the Office of Procurement (Code HS).

PART 1845—GOVERNMENT PROPERTY

Subpart 1845.1—General

Sec.
1845.102 Policy.
1845.102–70 NASA policy.
1845.102–71 Solicitation and review procedures.
1845.104 Review and correction of contractors' property control systems.
1845.106 Government property clauses.
1845.106–70 NASA contract clauses and solicitation provision.
1845.106–71 Plant reconversion and plant clearance.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.
1845.302 Providing facilities.
1845.302–1 Policy.
1845.302–2 Facilities contracts.
1845.302–70 Securing approval of facilities projects.
1845.302–71 Determination and findings.

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property.
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1845.405 Contracts with foreign governments or international organizations.
1845.405–70 NASA procedures.
1845.406 Use of Government production and research property on independent research and development programs.
1845.406–70 NASA policy.
1845.407 Non-Government use of plant equipment.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.502 Contractor responsibility.
1845.502–1 Receipts for Government property.
1845.502–70 Contractor-acquired property.
1845.505 Records and reports of Government property.
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1845.508 Physical inventories.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.
1845.606 Inventory schedules.
1845.606–1 Submission.
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1845.607–2 Recovering precious metals.
1845.608 Screening of contractor inventory.
1845.608–1 General.
1845.608–6 Waiver of screening requirements.
1845.610 Sale of surplus contractor inventory.
1845.610–3 Proceeds of sale.
1845.610–4 Contractor inventory in foreign countries.
1845.613 Property disposal determinations.
1845.615 Accounting for contractor inventory.

Subpart 1845.70—[Reserved]

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.
1845.7101–1 Property classification.
1845.7101–2 Transfers of property.
1845.7101–3 Unit acquisition cost.
1845.7101–4 Types of deletions from contractor property records.
1845.7101–5 Contractor's privileged financial and business information.
1845.7102 Instructions for preparing DD Form 1419.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.
1845.7202 General.
1845.7203 Delegations of property administration and plant clearance.
1845.7204 Retention of property administration and plant clearance.
1845.7205 Functional oversight of property administration and plant clearance.
1845.7206 Responsibilities of property administrators and plant clearance officers.
1845.7206–1 Property administrators.
1845.7206–2 Plant clearance officers.
1845.7207 Declaration of excess property.
1845.7208 Closure of contracts.
1845.7208–1 Completion or termination.
1845.7208–2 Final review and closing of contracts.
1845.7209 Special subjects.
1845.7209–1 Government property at alternate locations of the prime contractor and subcontractor plants.
1845.7209–2 Loss, damage, or destruction of Government property.
1845.7209–3 Loss, damage, or destruction of Government property while in contractor's possession or control.
1845.7209–4 Financial reports.
1845.7210 Contractor utilization of Government property.
1845.7210–1 Utilization surveys.
1845.7210–2 Records of surveys.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36722, July 9, 1997, unless otherwise noted.

Subpart 1845.1—General

1845.102 Policy.

1845.102–70 NASA policy.

Government property shall not be provided to contractors unless all other alternatives are not feasible. The decision to provide Government property to contractors (whether Government-furnished or contractor-acquired) shall be made only after careful consideration of all relevant factors. Among these factors are the following:

(a) Providing Government property to contractors increases the Government's administrative burden and requires recordkeeping and personnel.

(b) Providing property may dilute the contractor's overall responsibility and weaken guarantees, end-item delivery requirements, and other contract terms.

(c) Providing property may make NASA responsible for delays in that the Agency assumes responsibility for scheduling delivery of the property.

1845.102–71 Solicitation and review procedures.

(a) Each solicitation, as applicable, shall include the following:

(1) A list of any Government property available to be furnished, quantities, locations, conditions, and any related information.

(2) A requirement that offerors identify any Government property in their possession proposed for use during contract performance. The items, quantities, locations, acquisition costs, and proposed rental terms must be provided, along with identification of the Government contract under which the property is accountable.

(3) A requirement that requested Government provided facilities be described and identified by the classifications in 1845.7101–1.

(4) A requirement that offerors provide, if applicable, the date of the last Government property control system review, a summary of the findings and recommendations, and contractor corrective actions taken.

(b) The contracting officer shall provide a copy of the solicitation (or contract if no solicitation is used) to the center supply and equipment management officer (SEMO) for review for acquisitions with an estimated cost greater than $1,000,000, or for acquisitions over $50,000 when work is to be performed at the center, existing Government property is being furnished, or contract acquisition of Government property is required or permitted.

1845.104 Review and correction of contractors' property control systems. (NASA supplements paragraph (a))

(a) Property administration is normally delegated to DOD. When property administration is not delegated to DOD, NASA shall conduct the review of the contractor's property administration system in accordance with DOD 4161.2–M, Manual for the Performance of Contract Property Administration.

1845.106 Government property clauses. (NASA supplements paragraph (b))

(b) If NASA contemplates taking title to contractor acquired property under paragraph (c) of the clause at FAR 52.245–2, Government Property (Fixed-Price Contracts), the contracting officer shall list the applicable property in the contract as deliverable items.

1845.106–70 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.245–70, Contractor Requests for Government-Owned Equipment, in all solicitations and contracts that have the potential for contractor acquisition of equipment for the account of the Government that is not listed as a specific contract deliverable. See 1845.7102 for instructions on preparing DD Form 1419.

(b)(1) The contracting officer shall insert the clause at 1852.245–71, Installation-Accountable Government Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or directly leased by NASA when the contractor does not have authority to acquire property for the account of the Government.

(2) Use of this clause is subject to the SEMO's concurrence that adequate installation property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify in the contract the nature, quantity, and acquisition cost of such property and make the property available on a no-charge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) Contracting officers shall list separately in the contract any property provided under a FAR 52.245 Government property clause that remains accountable to the contractor during its use on the contract (such as property used at the contractor's or a subcontractor's off-site facility) and which is not also subject to the clause at 1852.245–71. The contracting officer shall address any specific maintenance considerations (e.g., requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(6) See 1845.106–70(e).

(c) The contracting officer shall insert the clause at 1852.245–72, Liability for Government Property Furnished for Repair and Services, in fixed-price solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement contracts unless all property to be provided is subject to the clause at 1852.245–71, Installation-Accountable Government Property. The clause shall also be included in other types of contracts when it is known at

award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) When approved by the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG), the contracting officer shall insert the clause at 1852.245–74, Contractor Accountable On-Site Government Property, in lieu of the clause at 1852.245–71, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer's written request for approval shall include a determination of costs that will be (1) avoided (e.g., additional costs to the installation's property management systems and staffing) and (2) incurred (e.g., reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245–75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245–2 with its Alternate II or 52.245–5, with its Alternate I is used.

(g) The contracting officer shall insert the clause at 1852.245–76, List of Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245–77, List of Installation-Accountable Property and Services, in solicitations and contracts that require performance at the center and authorize contractor use of property within the physical borders of the center.

(1) The contracting officer shall insert the provision at 1852.245–79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(j) The contracting officer shall insert the clause at 1852.245–80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when government property (real property, commercially available equipment, special test equipment, or special tooling) accountable under another contract(s) is authorized for use.

1845.106–71 Plant reconversion and plant clearance.

The Associate Administrator for Procurement (Code HS) is the approval authority for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion plant clearance until after award.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

Facilities, as defined in the FAR, also include real property and commercially available equipment, whether owned or leased by NASA or reimbursed as a cost under the contract.

Provide, as used in this subpart in such phrases as ''Government property provided to the contractor'' and ''Government-provided property,'' means either to furnish, as in ''Government-furnished property,'' or to permit to be acquired, as in ''contractor-acquired property.'' See FAR 45.101 for definitions of ''contractor-acquired property'' and ''Government-furnished property.''

1845.302 Providing facilities.

1845.302–1 Policy. (NASA supplements paragraph (a))

(a) In addition to the exceptions listed in FAR 45.302–1(a), existing NASA-owned facilities (whether contractor acquired or government furnished) being used by a contractor may be retained for the remainder of the contract period and furnished under any follow-on contract for the same effort if the contracting officer determines that to do so would be in the best interest of the Government, provided that:

(i) The facilities are required to accomplish the purpose of the contract;

(ii) The contract contains a provision requiring the contractor to replace any of the facilities that reach the end of their useful life during the contract period, or which are beyond economical

repair, if the facilities are still needed for contract performance. Such replacements shall be made with contractor-owned facilities. The contract provision shall also expressly prohibit contractor acquisitions of facility items for the Government, unless specifically authorized by the contract or consent has been obtained in writing from the contracting officer pursuant to FAR 45.302–1(a);

(iii) Consideration has been given to any alternative uses by Government personnel within the agency, in consultation with the center industrial property officer; and

(iv) The contracting officer documents the file with a detailed explanation of why continued furnishing of the facilities is in the best interest of the Government.

(a)(4)(A) The procurement officer is designated to make the determinations and findings (D&F) authorizing the use of Government facilities. See 1845.302–71 for D&F format.

(B) The requirements for a D&F and a prospective contractor's written statement asserting inability to obtain facilities are not applicable in the circumstances listed under FAR 45.302–1(d). In these cases, the contracting officer shall document the contract file with the rationale for providing the facilities, including the reason for not requiring the contractor to provide them.

1845.302–2 Facilities contracts.

Unless termination would be detrimental to the Government's interests, contracting officers shall terminate facilities contracts when the Government property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

1845.302–70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, Delegation of Authority—Approval Authorities for Facility Projects, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer's written authorization is required before any change is made in the scope or estimated cost of any facilities project.

1845.302–71 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302–1(a)(4) and 1845.302–1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval, concurrence must be obtained from the SEMO to ensure agreement on the use of the government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity or before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302–1(a)(4).

FINDINGS

1. The [insert the name of the contracting activity] and the contractor (have entered)/(proposed to enter) into Contract No. [Insert the contract number]. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Describe the types of facilities to be provided and any variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under $10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer
Date

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property. (NASA supplements paragraph (a))

(a)(i) A NASA contracting officer desiring to authorize use of Government property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence.

(ii) NASA contracting officers having cognizance over NASA property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

1845.403 Rental—Use and Charges clause. (NASA supplements paragraph (a))

(a) The Center Director is designated as the authority to make the determinations on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

1845.405–70 NASA procedures.

(a) NASA policy is to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

(b) The prior written approval of the Associate Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. The Logistics Management Office of the Headquarters Office of Management Systems (Code JG), the Office of General Counsel (Code G), and the Headquarters Office of External Relations (Code I) are required concurrences.

(c) Contracting officers shall forward requests for approval to Code HS, along with a summary of the circumstances involved, including as a minimum—

(1) The name of the requesting contractor;

(2) The number of the contract under which the equipment is controlled;

(3) A description of the equipment;

(4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;

(5) A description of the articles to be manufactured or services to be performed;

(6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the equipment beyond the expected expiration or completion date of the NASA contract;

(7) A statement that the use of Government property is consistent with the best interests of the United States;

(8) A statement that such use is legally authorized; and

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States (*e.g.*, an approved license or agreement from the Department of State or Department of Commerce).

(d) Use, if approved, shall be subject to rent in accordance with FAR 45.403.

[62 FR 36722, July 9, 1997, as amended at 65 FR 31103, May 16, 2000]

1845.406 Use of Government production and research property on independent research and development programs.

1845.406–70 NASA policy.

The contracting officer should not authorize contractor use of Government property for independent research and development on a rent-free basis except in unusual circumstances when it has been determined by the contracting officer that—

(a) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and

(b) No competitive advantage will accrue to the contractor through such use (see FAR 45.201).

1845.407 Non-Government use of plant equipment. (NASA supplements paragraph (a)).

For NASA, the coverage in FAR 45.407, applies to all equipment, not just plant equipment.

(a)(i) The Associate Administrator for Procurement (Code HS) is the approval authority for non-Government use of equipment exceeding 25 percent.

(ii) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All equipment having a unit acquisition cost of less than $25,000 at any single location may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(iii) Approval for non-Government use of less than 25 percent shall be for a period not exceeding 1 year. Approval for non-Government use in excess of 25 percent shall not be for less than 3 months.

(iv) Requests for the approval shall be submitted to Code HS at least 6 weeks in advance of the projected use and shall include—

(A) The number of equipment items involved and their total acquisition cost; and

(B) An itemized listing of equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

62 FR 36722, July 9, 1997. Redesignated at 64 FR 36606, July 7, 1999]

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.502 Contractor responsibility.

1845.502–1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, NASA Property in the Custody of Contractors (see 1845.7101).

1845.502–70 Contractor-acquired property.

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) Facilities.

(1) Prior contracting officer approval, if the facilities are not already specifically described in the contract as contractor-acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or equivalent format, and return of Certificate of Nonavailability.

(3) Submission of the written statement prescribed by FAR 45.302–1(a)(4).

(b) Special test equipment.

(1) Contracting officer approval 30 days in advance if the equipment is not

identified in the solicitation or contract.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

(c) Special tooling.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability.

(d) Material. If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting office consent if required by that clause.

(e) Agency-peculiar property.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

1845.505 Records and reports of Government property.

1845.505–14 Reports of Government property. (NASA supplements paragraphs (b))

(b) When the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, is included in the contract, the contractor shall submit NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form and 1845.71. Contractor property control systems shall distinguish between Government furnished and contractor acquired property for purposes of reporting the acquisition cost in the property classifications shown in FAR 45.505–14(a) (1) through (5).

1845.508 Physical inventories.

NASA contractors shall reconcile inventories with the official property records and submit reports to the property administrator within 30 days after inventory completion. The contractor shall investigate all losses of property and discoveries of unrecorded property to determine the causes of the discrepancy and actions needed to prevent its recurrence.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

(1) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(2)(i) The contractor's or subcontractor's authority to approve the sale, purchase, or retention of Government property on a contract which is excess to needs after Government reutilization screening at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain such property at less than cost with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(A) A sale by a subcontractor to the contractor, the next higher-tier subcontractor, or their affiliates; or

(B) A sale, purchase, or retention by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(ii) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.606 Inventory schedules.

1845.606–1 Submission.

See 1845.608 for intra-agency screening of excess contractor-held property.

1845.607 Scrap.

1845.607–1 General.

1845.607–170 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in

accordance with that procedure and not processed under this section.

(b) The center property administrator is authorized to approve the contractor's scrap procedure. Before approval, the plant clearance officer shall review the procedure, particularly regarding sales. The plant clearance officer shall ensure that the procedure contains adequate requirements for inspecting and examining items to be disposed of as scrap. When the contractor's procedure does not require physical segregation of Government-owned scrap from contractor-owned scrap and separate disposal, care shall be exercised to ensure that a contract change that generates a large quantity of property does not result in an inequitable return to the Government. In such a case, the property administrator shall make a determination as to whether separate disposition of Government scrap would be appropriate.

(c) A plant clearance case shall not be established for property disposed of through the contractor's approved scrap procedure.

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and 1845.

1845.607–2 Recovering precious metals. (NASA supplements paragraph (b)).

(b) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS–R, Federal Center, Battle Creek, MI 49017–3092, for instructions regarding disposition.

1845.608 Screening of contractor inventory.

1845.608–1 General. (NASA supplements paragraphs (a))

(a) Property Disposal Officers (PDOs) are the center focal points for intra-agency reutilization screening. PDOs shall acknowledge receipt of inventory schedules within 30 days and simultaneously provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NHB 4300.1.

1845.608–6 Waiver of screening requirements.

The Director of the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG) is designated to authorize exceptions to intra-agency screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610–3 Proceeds of sale.

The plant clearance officer shall maintain an open suspense record until verifying that credit has been applied, unless another Government representative has specifically assumed this responsibility.

1845.610–4 Contractor inventory in foreign countries.

NASA procedures for disposal are in NHB 4300.1.

1845.613 Property disposal determinations.

The center property disposal officer (PDO) shall review the determinations in accordance with NHB 4300.1.

1845.615 Accounting for contractor inventory.

A copy of Standard Form 1424, Inventory Disposal Report, shall be provided to the center industrial property officer or the PDO.

Subpart 1845.70—[Reserved]

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain annual data

from those records to meet these requirements. Changes in Federal Accounting Standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NASA Form (NF) 1018. Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart. NASA Form 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy and timeliness of the report are very important. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant Center Industrial Property Officer (IPO) to discuss corrective action. IPO's shall work with Center finance personnel to determine appropriate corrective action and provide guidance to contractors.

[65 FR 54814, Sept. 11, 2000]

1845.7101–1 Property classification.

(a) *General.* Contractors shall report costs in the classifications on NF 1018, as described in this section.

(b) *Land.* Includes costs of land and improvements to land. Contractors shall report land with a unit acquisition cost of $100,000 or more.

(c) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Contractors shall report land with a unit acquisition cost of $100,000 or more. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(d) *Other structures and facilities.* Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences. Contractors shall report other structures and facilities with a unit acquisition cost of $100,000 or more and a useful life of two years or more.

(e) *Leasehold improvements.* Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract. Contractors shall report leasehold improvements with a unit acquisition cost of $100,000 or more and a useful life of two years or more.

(f) *Construction in progress.* Includes costs of work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title, regardless of value.

(g) *Equipment.* Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, software, test equipment, including their accessory or auxiliary items). Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All items under $100,000, regardless of useful life.

(h) *Special tooling.* Includes costs of equipment and manufacturing aids (and their components and replacements) of such a specialized nature that, without substantial modification or alteration, their use is limited to development or production of particular supplies or parts, or performance of particular services. Examples include jigs, dies, fixtures, molds, patterns, taps and gauges. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more

and a useful life of two years or more; and

(2) All items under $100,000, regardless of useful life.

(i) *Special test equipment.* Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All items under $100,000, regardless of useful life.

(j) *Material.* Includes costs of NASA-owned property held in inventory that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, parts, assemblies, small tools and supplies. Material that is part of work-in-process is not included. Contractors shall report the amount for all Materials in inventory, regardless of unit acquisition cost.

(k) *Agency-peculiar property.* Includes costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include research aircraft, reusable space vehicles, ground support equipment, prototypes, and mock-ups. The amount of property, title to which vests in NASA as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of two years or more; and

(2) All items under $100,000, regardless of useful life. Completed end items which otherwise meet the definition of Agency-Peculiar Property, but are destined for permanent operation in space, such as satellites and space probes, shall be reported as Contract Work in Process.

(l) *Contract work-in-process.* Includes costs of all work-in-process regardless of value; excludes costs of completed items reported in other categories. Includes completed end items of property which otherwise meet the definition of Agency-Peculiar Property, but are destined for permanent operation in space, such as satellites and space probes.

[65 FR 54814, Sept. 11, 2000]

1845.7101–2 Transfers of property.

A transfer is a change in accountability between and among prime contracts, NASA centers, and other Government agencies (*e.g.*, between contracts of the same NASA Center, contracts of different NASA Centers, a contract of one NASA Center to another, a NASA Center to a contract of another NASA Center, and a contract to another Government agency or its contract). To enable NASA to properly control and account for transfers, they shall be adequately documented. Therefore, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be accounted for and reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245–72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant NASA Center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided to conduct repairs are reportable, regardless of contract type.

(a) *Approval and notification.* The contractor must obtain approval of the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for equipment), unit acquisition

costs (as defined in 1845.7101–3, Unit Acquisition Cost), original acquisition dates for items with a unit acquisition cost of $100,000 or more and a useful life of two years or more, and any other appropriate identifying or descriptive data. Where the DD Form 250, Material Inspection and Receiving Report, is used, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original acquisition date shall be shown in Block 23, by item. Other formats, such as the DD Form 1149, Requisition and Invoice/Shipping Document, should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR Part 45 and this Part 1845, or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA Center responsible for their respective contracts when accountability for NASA property is transferred to, or received from, other contracts, contractors, NASA Centers, or Government agencies. Copies of shipping or receiving documents will suffice as notification in most instances.

(b) *Reclassification*. If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation*. If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, acquisition date, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505–2.

[65 FR 54815, Sept. 11, 2000]

1845.7101–3 Unit acquisition cost.

(a) The unit acquisition cost shall include all costs incurred to bring the property to a form and location suitable for its intended use. For example, the cost shall include the following, as appropriate:

(1) Amounts paid to vendors or other contractors.

(2) Transportation charges to the point of initial use.

(3) Handling and storage charges.

(4) Labor and other direct or indirect production costs (for assets produced or constructed).

(5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys.

(6) Acquisition and preparation costs of buildings and other facilities.

(7) An appropriate share of the cost of the equipment and facilities used in construction work.

(8) Fixed equipment and related installation costs required for activities in a building or facility.

(9) Direct costs of inspection, supervision, and administration of construction contracts and construction work.

(10) Legal and recording fees and damage claims.

(11) Fair values of facilities and equipment donated to the Government.

(12) Material amounts of interest costs paid.

(b) Acquisition cost shall include, where appropriate, for contractor acquired Special Test Equipment, Special Tooling, Agency-Peculiar Property and Contract Work-In-Process, related fees, or a *pro rata* portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate are those in which the contractor designs,

develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(c) The use of weighted average methodologies is acceptable for valuation of Material.

(d) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(e) The contractor shall redetermine unit acquisition costs of items returned for modification or rehabilitation. If an item's original acquisition cost is $100,000 or more, only modifications that improve that item's capacity or extend its useful life two years or more *and* that cost $100,000 or more shall be added to the original acquisition cost reported on the NF 1018. The costs of any other modifications will be considered to be expensed. If an item's original unit acquisition cost is less than $100,000, but a single subsequent modification costs $100,000 or more, that modification *only* will be reported as an item $100,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under $100,000 total. The quantity for the modified item will remain ''1'' and be reported with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under $100,000, it shall be reported as under $100,000.

(f) The computation of work in process shall include all direct and indirect costs of fabrication, including associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory. Work in Process shall include the unit acquisition cost of completed end items of property which otherwise meet the definition of Agency-Peculiar Property, but which are destined for permanent operation in space, such as satellites and space probes.

[65 FR 54815, Sept. 11, 2000]

1845.7101–4 Types of deletions from contractor property records.

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Lost, damaged or destroyed.* Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(b) *Transferred in place.* Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(c) *Transferred to NASA Center accountability.* Deletion amounts that result from transfer of accountability to the NASA Center responsible for the contract, whether or not items are physically moved.

(d) *Transferred to another NASA Center.* Deletion amounts that result from transfer of accountability to a NASA Center other than the one responsible for the contract, whether or not items are physically moved.

(e) *Transferred to another Government agency.* Deletion amounts that result from transfer of property to another Government agency.

(f) *Purchased at cost/returned for credit.* Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605–1, or from contractor returns to suppliers under FAR 45.605–2.

(g) *Disposed of through plant clearance process.* Deletions other than transfers within the Federal Government, *e.g.*, donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

(h) *Other.* Types of deletion other than those reported in paragraphs (a) through (g) of this section.

[65 FR 54816, Sept. 11, 2000]

1845.7101–5 Contractor's privileged financial and business information.

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA Centers. Transfer of the property to the receiving contractor shall be on a no-cost basis.

[65 FR 54816, Sept. 11, 2000]

1845.7102 Instructions for preparing DD Form 1419.

(a) The contractor shall enter the essential information covering Sections I and II before submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the Industrial Property Officer (IPO). The IPO shall review each submission for completeness and authenticity. Incomplete or invalid requests shall be returned for correction.

(b) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA within 30 days after allocation. A copy of the DD Form 1419, or equivalent format, will serve as the clearance document to inspect the equipment at the storage site. Note acceptance or rejection of the item, without inspection or after inspection in Section VI. If the item is acceptable, execute Section VII. Cite the NASA appropriation symbol where applicable in Section VII.

(c) The IPO shall assign a requisition number to each DD Form 1419, or equivalent format request.

(d) Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year. For example, April 15, 1997, would be written as 7095 (April 15 being the 95th day of the year). The last entry will be a four-digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example, the ninth requisition prepared on April 15, 1997, would be 7095–0009, preceded by the FEDSTRIP/MILSTRIP Activity Address Code. When submitting subsequent DD Forms 1419, or equivalent format, related to the item requested, the IPO shall use the same requisition number and add the alpha code to the end of the requisition number to indicate a second or third action on the basic request. Alpha ''A'' would indicate a second request, ''B'' a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

(e) Detailed directions for completing the DD Form 1419 follow. The contractor may elect to provide the required data in an equivalent format, which complies with these directions.

Section I

Item Description. To ensure adequate screening, the item description must be complete. For single-purpose equipment or general-purpose equipment with special features, requests must contain detailed descriptive data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal Supply Code for manufacturer (Cataloging Handbook H4–1) of the item requested.

Block 3. Enter the manufacturer's model style, or catalog number assigned to the equipment being requisitioned. Always use the model number, if available. The style number is the next preference. Enter ''None'' in this block if the model, style or catalog number is not known.

Block 4. Enter the first four digits of the National Stock Number, if known.

Block 5. Not applicable.

Block 6. Self-explanatory.

Block 7. Place an ''X'' in the applicable block to indicate whether you desire to physically inspect the item before acceptance.

Block 8. Self-explanatory.

Block 9. Enter the complete description of the item. Continue the description in Block 53 if additional space is needed.

Section II

Block 10. Enter the contractor's name, street address, city, state, and zip code from which the requisition is

being initiated. The address should be the one to which inquiries of a technical nature will be referred. Specify the telephone number of an individual who will respond to inquiries concerning the request.

Block 11. Enter the contract number or document number authorizing acquisition of the items shown in Section I. This normally will be a facility contract number. Otherwise, it should be a purchase order or procurement request number.

Block 12. Self-explanatory.

Block 13. Not applicable.

Block 14. Disregard the ''Military'' block. Show the NASA contract number and program for which the item is to be used.

Block 15. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., that the equipment must satisfy.

Block 16. Determine the date the item must be installed to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 17. Enter the date by which NASA must issue a Certificate of Nonavailability. Determine the date by subtracting the acquisition lead time and 30 days administrative lead time from the date shown in Block 16.

Block 18. Enter the Defense Priority and Allocations System (DPAS) rating assigned to the contract or anticipated purchase order, if applicable.

Block 19. Place an ''X'' in the appropriate box. If for replacement, identify the item being replaced and the reason for replacement.

Block 20. Place an ''X'' in the appropriate box. Show the appropriate symbol if the answer is ''yes.''

Block 21. Not applicable.

Blocks 22 and 23. In addition to the official's title and signature, type the signing official's name, office symbol or name, and telephone number plus extension. The company representative who prepares and submits the requirement to the cognizant NASA certifying office should sign.

Block 24. Self-explanatory.

Block 25a. Not applicable.

Block 25b. Enter the name and address of the installation certifying the requirement.

Block 25c. This block is for signature of the property administrator or contracting officer at plant level.

Block 25d. Self-explanatory.

Block 25e. This block is for the signature of NASA installation official certifying the requirement.

Block 25f. Self-explanatory.

Section III

Blocks 26–29. Self-explanatory.

Section IV

N/A

Section V

Complete this section if equipment is unavailable.

Section VI

Blocks 44–47. The requesting official signing Section II, Block 23, shall complete Section VI and shall list reasons for non-acceptance in Section VIII, Remarks, or on a separate document attached to the DD Form 1419.

Section VII

Block 48. Enter the complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate railhead and truck delivery points when other than the address named.

Blocks 49 and 50. Self-explanatory.

Blocks 51 a. and b. Ensure that NASA appropriation symbols are included with the work order number.

Block 51c. Enter the NASA appropriation symbol chargeable for any special work ordered (e.g., rebuild, repair, or accessory replacement).

Block 51d. Enter the NASA installation and office symbol for the organization that will make payment for transportation and packing, crating, and handling.

Block 52. Self-explanatory.

Section VIII

Block 53. This block can be used to expand or explain entries made in Blocks 1 through 52. When requisitioning equipment from excess listings,

identify the issuing office, list number, date, control number, and item number assigned to the equipment. When requesting equipment from DOD inventories, refer to DOD instructions.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.

Supporting responsibility, as used in this subpart, relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

Property control system, as used in this subpart, identifies a contractor's internal management program encompassing the protection of, preservation of, accounting for, and control of property from its acquisition through disposition.

1845.7202 General.

This subpart describes major elements of the NASA Contract Property Management Program. It provides guidance to NASA installation personnel responsible for NASA contract property (NASA personal property in the possession of contractors). It applies to all NASA installation personnel charged with this responsibility, including industrial property officers and specialists, property administrators, and plant clearance officers. It also provides detailed procedures for property administration. The NASA Contract Property Management Program includes the following three major elements:

(a) Performance of property administration and plant clearance by DOD under delegations from NASA, pursuant to 1842.101.

(b) Performance of property administration and plant clearance by NASA under certain situations, pursuant to 1842.203.

(c) Maintenance of property administration and plant clearance functional oversight, regardless of delegations.

1845.7203 Delegations of property administration and plant clearance.

When delegated to DOD, property administration and plant clearance are performed in accordance with DOD's regulations and procedures, as amended by the NASA Letter of Contract Administration Delegation, Special Instructions on Property Administration and Plant Clearance. These Special Instructions are developed by the Headquarters Office of Management Systems and Facilities Logistics Management Office (Code JLG), and are available from that office upon request. The contracting officer shall issue the Special Instructions with delegations whenever Government property will be involved. Additional or more tailored property instructions are not proscribed but must be coordinated with Code JLG before issuance.

1845.7204 Retention of property administration and plant clearance.

NASA may occasionally retain the property administration and plant clearance function, such as for contract work performed at the installation awarding the contract and not subject to the clause at 1852.245–71, Installation-Accountable Government Property. In these cases, property administration shall be performed in accordance with 1845.3 through 1845.6, and plant clearance shall be performed in accordance with FAR Subpart 45.6 and 1845.6. Under the clause at 1852.245–71, property administration and plant clearance are neither delegated nor retained; they are simply not required because the property is treated as installation rather than contract property.

1845.7205 Functional oversight of property administration and plant clearance.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency in no way relieves NASA contracting officers of their ultimate responsibility for the proper and effective management of contracts. The functional management responsibility for contract property is

described in this section. Beyond individual contracting officers, each NASA installation has designated an industrial property officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, and delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire contract property management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are:

(a) Provide a focal point for all management of contract property, including Government property (Government-furnished and contractor-acquired) provided to universities as well as to industry.

(b) Provide guidance to contracting and other personnel on the NASA property provisions.

(c) To the extent feasible, review property provisions of acquisition plans, solicitations, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure that vesting-of-title determinations are made and documented pursuant to FAR 35.014(b).

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries for all contracts for which property administration has been delegated. Advise Code JLG of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Review and analyze NASA Form 1018, NASA Property in the Custody of Contractors.

(h) Negotiate, or ensure the negotiation of, facilities contracts when required by FAR 45.302 and 1845.302. Advise Code JLG annually of new and completed facilities contracts.

(i) Review property administrators' approvals of relief of responsibility for lost, damaged, and destroyed property and question any excessive or repetitive approvals.

(j) When appropriate, make recommendations to source and performance evaluation boards regarding property management and award fee criteria and evaluations regarding property management.

(k) Monitor plant clearance status to preclude delays in contract closeout.

(l) Maintain contract property files for all transactions and correspondence associated with each contract. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract and forward for inclusion with the official completed file.

(m) Perform on-site property administration and plant clearance when they are not delegated to DOD and the property is not subject to the clause at 1852.245–71.

1845.7206 Responsibilities of property administrators and plant clearance officers.

1845.7206–1 Property administrators.

(a) When property administration is not delegated to DOD, the property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. The property administrator's responsibilities include—

(1) Developing and applying a system survey program for each contractor under the property administrator's cognizance;

(2) Evaluating the contractor's property control system and approving or recommending disapproval;

(3) Advising the contracting officer of any (i) contractor noncompliance with approved procedures and (ii) other significant problems the property administrator cannot resolve, and recommending appropriate action, which may include disapproval of the contractor's property control system;

(4) Resolving property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Headquarters Office of the Inspector General, the Defense Contract Audit Agency (DCAA), and other Government agencies; and

(5) Recognizing the functions of other Government personnel having cognizance of Government property and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) The participation of property administrators (or other Government industrial property personnel) in preaward surveys/post-award orientations is required whenever significant amounts of Government property will be involved, in order to reveal and resolve property management problems early in the acquisition cycle.

1845.7206–2 Plant clearance officers.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal;

(h) Determining the method of disposal;

(i) Surveillance of any contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales;

(n) Securing antitrust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

1845.7207 Declaration of excess property.

A problem often disclosed by system analysis is the failure of a contractor to report Government property not needed in performance of the contract (excess). The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall ensure prompt disposition. For centrally reportable plant equipment, the property administrator shall—

(a) Assure the preparation and submission of individual reports required of the contractor;

(b) Verify the permit certifications required by the forms; and

(c) Transmit the report to the NASA Industrial Property Officer.

1845.7208 Closure of contracts.

1845.7208–1 Completion or termination.

Upon completion or termination of a contract, the property administrator shall—

(a) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(b) Advise the cognizant plant clearance officer as to the existence at a

contractor's plant of residual property requiring disposal.

1845.7208–2 Final review and closing of contracts.

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review and sign a determination that—

(1) Disposition of Government property has been properly accomplished and documented;

(2) Adjustment documents, including any request of the contractor for relief from responsibility, have been processed to completion;

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(4) All questions regarding title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(5) The contract property control record file is complete and ready for retirement.

(b) When final review pursuant to paragraph (a) of this section reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, Contract Administration Completion Record, or equivalent.

(c) The executed DD Form 1593 shall be forwarded to the contracting officer, the Property Summary Data Record shall be so annotated, and the contracting officer shall include it in the contract file.

1845.7209 Special subjects.

1845.7209–1 Government property at alternate locations of the prime contractor and subcontractor plants.

(a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for this property.

(b) A Government property administrator cognizant of the location of the property shall normally be designated to (1) perform required surveys of the property control system and (2) exercise surveillance over the property as a supporting responsibility.

(c) If the property administrator determines that supporting property administration is required, he or she shall write the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include—

(1) The name and address of the prime contractor;

(2) The prime contract number;

(3) The name and address of the alternate location of the prime contractor, or of the subcontractor where the property will be located;

(4) A listing of the property being furnished, or, if property is being acquired locally, a statement to this effect; and

(5) A copy of the subcontract or other document under which the property will be furnished or acquired.

(d) Concurrent with the action cited in paragraph (c) of this section, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with the contractor's own personnel, or elect to rely upon the system approval and continuing surveillance by a supporting property administrator of the property control system at the alternate location or subcontractor plant. If the prime contractor advises that it will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, it will be required to perform the requisite reviews and surveillance and document its actions and findings.

(e) If a single item or limited quantities of property will be located at an alternate location or subcontractor plant, the property administrator may determine that supporting property administration is unnecessary, provided—

(1) The prime contractor's records adequately reflect the location and use of the property;

(2) The nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(3) The nature of the property is such that a program of preventive maintenance is not required.

(f) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis of special reviews or such other support as may be necessary. Repeated requests for assistance indicate a requirement for requesting supporting property administration.

1845.7209–2 Loss, damage, or destruction of Government property.

(a) Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described by the following:

(1) Sealed-bid and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract (see the clause at FAR 52.245–2, Government Property (Fixed-Price Contracts)).

(2) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract, with the exceptions set forth in the clause at FAR 52.245–2, Alternate I and Alternate II.

(3) Cost-reimbursement contracts (see the clause at FAR 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)) provide that the Government assumes the risk for all Government property provided under the contract when there is no willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined in the contract.

(4) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks the contract expressly requires the contractor to insure against. Therefore, before reaching a conclusion or making a determination, the contracting officer shall obtain property administrator review of the contract clause and shall obtain advice from appropriate legal counsel on questions of legal meaning or intent.

(5) ''Willful misconduct'' may involve any intentional or deliberate act or failure to act causing, or resulting in, loss, damage, or destruction of Government property.

(6) ''Lack of good faith'' may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or the contracting officer's authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued by authorized Government personnel.

(b) If part of the contractor's system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, or destruction of Government property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reinstatement of approval.

1845.7209–3 Loss, damage, or destruction of Government property while in contractor's possession or control.

(a) The property administrator shall require the contractor to report any loss, damage, or destruction of Government property in its possession or control (including property in the possession or control of subcontractors) as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of Government property considered unreasonable by the property administrator or loss, damage, or destruction of Government property not reported by the contractor, the property administrator shall prepare a statement of the items and amount involved. This statement shall be furnished to the contractor for investigation and submission of a written report to the property administrator relative to the incidents reported.

(c) The contractor's reports referenced in paragraphs (a) and (b) of this section shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

(1) The contractor's name and the contract number;

(2) A description of items lost, damaged, destroyed, or unreasonably consumed;

(3) The cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damage (in event actual cost is not known, use a reasonable estimate);

(4) The date, time (if pertinent), and cause or origin of the loss, damage, destruction, or consumption;

(5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(6) Insurance, if any, covering the Government property or any part or interest in any commingled property;

(7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determining liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to the contractor's liability for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, industrial specialist, insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. If analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes a risk assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor is liable for the loss, damage, destruction, or unreasonable consumption of Government property, he or she shall forward the complete file with conclusions and recommendations to the contracting officer for review and determination. The file shall contain—

(i) A statement of facts as supported by investigation;

(ii) Recommendations as to the contractor's liability and its amount;

(iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) Requirements for disposition, repair, or replacement of damaged property; and

(v) Other pertinent comments.

(2) A copy of the contracting officer's determination shall be furnished to the contractor and the property administrator, and a copy shall be retained in the contracting officer's files. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

1845.7209–4 Financial reports.

The property administrator is responsible for obtaining financial reports as prescribed in 1845.505–14 for all assigned contracts. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (see 1852.245–73) except as noted in 1845.7101–4(c).

1845.7210 Contractor utilization of Government property.

1845.7210–1 Utilization surveys.

(a) The property administrator is responsible for ensuring that the contractor has effective procedures for evaluating Government property utilization. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of these procedures.

(b) Upon assignment of an initial contract under which Government-owned plant equipment in particular will be provided to a contractor, the property administrator shall ensure that the contractor has established effective procedures and techniques for controlling its utilization. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate these procedures. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. If the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) The property administrator shall perform annual surveys of the contractor's procedures related to utilization of Government-owned plant equipment. At contractor facilities having a substantial quantity of plant equipment, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Surveys shall be conducted to the degree determined necessary, considering the findings of prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to justify, by specific Government programs, the retention of all Government-owned plant equipment. The property administrator shall make maximum use of contractor's machine loading data, order boards, production planning records, machine time records, and other production control methods.

(d) The property administrator shall conduct a special survey when a significant change occurs in the contractor's production schedules, such as a termination, completion of a contract, or a major adjustment in a program. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, the contractor shall identify and report Government-owned plant equipment in accordance with FAR 45.502(g) and 45.509–2(b)(4). Items that are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contracting officer shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

1845.7210–2 Records of surveys.

The property administrator shall prepare a record incorporating written findings, conclusions, and recommendations at the conclusion of each survey. If appropriate, the property administrator's record may be limited to a statement expressing concurrence with the reports of other specialists. The property administrator shall retain one copy of each record in the property administration file.

PART 1846—QUALITY ASSURANCE

Sec.
1846.000 Scope of part.

Subpart 1846.3—Contract Clauses

1846.370 NASA contract clauses.

Subpart 1846.4—Government Contract Quality Assurance

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Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.
1846.703–70 Additional criteria.
1846.704 Authority for use of warranties.
1846.770 Administration.

AUTHORITY: U.S.C. 2473(c)(1).

SOURCE: 62 FR 14024, Mar. 25, 1997, unless otherwise noted.

1846.000 Scope of part.

The Government has a duty to assure that appropriated funds are spent wisely. That duty is fulfilled in part through surveillance. Surveillance may be conducted through ''insight'' (*i.e.*, monitoring of selected metrics and/or milestones) or ''oversight'' (i.e., Government review and concurrence with contractor decisions). The decision to use insight or oversight is based on an assessment of the risk inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as performance-based.

[65 FR 37060, June 13, 2000]

Subpart 1846.3—Contract Clauses

1846.370 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.246–70, Mission Critical Space System Personnel Reliability Program, in solicitations and contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program.

(b) The contracting officer shall insert the clause at 1852.246–73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4—Government Contract Quality Assurance

1846.401 General. (NASA supplements paragraph (a))

(a) The quality assurance surveillance plan (QASP) which the project office prepares in conjunction with the statement of work is preliminary. It reflects the Government's surveillance approach relative to the perceived programmatic risk, and is written at a general rather than specific level because the risks will not be completely identified at that time. After contract award, contracting officers shall ensure that the QASP is revised to reflect the risks associated with the successful proposal. This final QASP shall not be included in the contract, but should be periodically reviewed to ensure its currency.

[65 FR 37060, June 13, 2000]

1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246–71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670–1 General.

(a) This Subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to evidence Government contract quality assurance (CQA).

(b) MIRRs are used to document CQA, acceptance of supplies and services, and shipments. MIRRs are not used for—

(1) Shipments by subcontractors not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

1846.670–2 Applicability.

(a) This subpart applies to all deliveries of supplies or services acquired by or for NASA except:

(1) Acquisitions under FAR part 13;

(2) Negotiated subsistence acquisitions; or

(3) Contracts for which the end item is a technical or scientific report.

(b) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

(c) When NASA provides CQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

1846.670–3 Use.

The DD Form 250 is a multipurpose report used for—

(a) Providing evidence of CQA at origin or destination;

(b) Providing evidence of acceptance at origin or destination;

(c) Packing list documentation;

(d) Receiving;

(e) Shipping;

(f) Contractor invoice; and

(g) Contractor invoice support.

1846.670–4 Multiple shipments.

(a) If the ''shipped to,'' ''marked for,'' ''shipped from,'' ''CQA,'' and ''acceptance'' data are the same for more than one shipment made on the same day under the same contract in a single car, truck, or other vehicle, one MIRR shall be prepared to cover all such shipments.

(b) If the volume of the shipments precludes the use of a single car, truck, or other vehicle, a separate MIRR shall be provided for each vehicle.

1846.670–5 Forms.

(a) Contractors may obtain MIRR forms from the contracting office at no cost.

(b) Contractors may print forms, provided their format and dimensions are identical to the MIRR forms printed by the Government.

1846.671 Contract quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required CQA actions at subcontract level.

The following entries shall be made on the document/packing list:

Required CQA of items has been performed.

(Signature of Authorized Government Representative)

(Date)

(Typed Name and Office)

(b) Distribution for Government purposes shall be one copy each—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparing DD Forms 250 and 250c.

1846.672–1 Preparation instructions.

(a) General. (1) Dates shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 96SEP24).

(2) Addresses shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) The data entered in the blocks at the top of DD Form 250C shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information*. Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT).* Enter the contract number, with its identifying center prefix, as contained in the contractual

document, including any call/order number.

(d) *Block 2—SHIPMENT NO.* (1) The shipment number is a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each ''shipped from'' address (Block 11). The prefix shall be different for each ''Shipped From'' address and shall remain constant throughout the contract period.

(ii) The serial number for the first shipment under a prime contract from each ''shipped from'' address shall be 0001; subsequent shipments under that prime contract shall be consecutively numbered. Alpha-numerics shall be used when more than 9,999 numbers are required. Alpha-numerics shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999. When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a ''replacement shipment'' is involved (see paragraph (r)(4)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a ''Z'' in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect

(i) To direct the subcontractor to suffix the ''Z'' or

(ii), On receipt of the subcontractor final shipment information, to correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a ''Z'' to that shipment number.

(e) *Block 3—DATE SHIPPED.* Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an ''E'' after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissurance of the MIRR is not required to show the actual shipping date.

(f) *Block 4—B/L TCN.* When applicable, enter the commercial or Government bill of lading number after ''B/L''; and the Transportation Control Number after ''TCN.''

(g) *Block 5—DISCOUNT TERMS.* (1) The Contractor may enter the discount in terms of percentages on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672–5.

(h) *Block 6—INVOICE.* (1) The contractor may enter the invoice number and actual or estimated date on all copies of the MIRR. When the date is estimated, enter an ''E'' after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(2) When the MIRR is used as an invoice, see 1846.672–5.

(i) *Block 7—PAGE/OF.* Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8—ACCEPTANCE POINT.* Enter an ''S'' for origin or ''D'' for destination as specified in the contract as the point of acceptance. Enter an alphabetic ''O'' for other if the point of acceptance is not specified in the contract.

(k) *Block 9—PRIME CONTRACTOR.* Enter the code and address.

(l) *Block 10—ADMINISTERED BY.* Enter the code and address of the contracting office cited in the contract.

(m) *Block 11—SHIPPED FROM/CODE/FOB.* (1) Enter the code and address of the ''shipped from'' location. If identical to Block 9, enter ''See Block 9.''

(2) For performance of services that do not require delivery of items upon completion, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter ''See Block 9.''

(3) Enter on the same line and to the right of ''FOB'' an ''S'' for origin or ''D'' for destination as specified in the

contract. Enter an alphabetic ''O'' if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12—PAYMENT WILL BE MADE BY.* Enter the address of the payment office cited in the contract.

(o) *Block 13—SHIPPED TO/CODE.* Enter the code and address from the contract or shipping instructions.

(p) *Block 14—MARKED FOR/CODE.* Enter the code and address from the contract or shipping instructions.

(q) *Block 15—ITEM NO.* Enter the item number used in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16—STOCK/PART NO./DESCRIPTION.* (1) Enter, as applicable, for each item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal Supply Code (as published in Cataloging Handbook H4–1), and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind (e.g., ''Resistor''). Below this description, enter the contract item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) For service items, enter the word ''SERVICE'' followed by a short description of less than 20 characters. Do not complete items 4, 13, and 14 when material is not shipped.

(3) For all contracts administered by the Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. (State weight in pounds only).

(4) Enter on the next line the following as appropriate (entries may be extended through Block 20). When entries apply to more than one item in the MIRR, enter them only once after the last item and reference the applicable item numbers.

(i) Enter in capital letters any special handling instructions/limits for material environmental control (e.g., temperature, humidity, aging, freezing, and shock).

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter ''GFP''.

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters ''REPLACEMENT SHIPMENT'' (see paragraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: ''Item(s) shipped short of the following component(s): FSN or comparable identification , Quantity , Estimated Value , Authority .''

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: ''These components were listed as shortages on Shipment Number , date shipped .''

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: ''Return to , Quantity , Item , Ownership (Government/contractor).''

(viii) Enter shipping container number(s), the type, and the total number

of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter ''DISCOUNT EXPEDITE'' in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer: ''Note: Acceptance and payment are contingent upon receipt of approved test/evalution results.'' The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering ''PAYMENT COPY'' in approximately one-half-inch outline-type letters with ''FORWARD TO BLOCK 12 ADDRESS'' in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17—QUANTITY SHIP/REC'D.* (1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a ''Z'' below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter ''A'' top designate first replacement, ''B'' for second replacement, and so forth. The final shipment indicator ''Z'' shall not be used when a final line item shipment is replaced.

(t) *Block 18 UNIT.* Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage.

(u) *Block 19—UNIT PRICE.* Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20—AMOUNT.* Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21—CONTRACT QUALITY ASSURANCE.* The words ''conform to contract'' contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) *''A. ORIGIN.''*

(i) The authorized Government representative shall—

(A) Place an ''X'' when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) *''B. DESTINATION.''*

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance of CQA and acceptance are at destination, the authorized Government representative shall—

(A) Place an ''X'' in the appropriate box(es);

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(x) *Block 22—RECEIVER'S USE.* This block shall be used by the receiving authority (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23—CONTRACTOR USE ONLY.* This block is provided and reserved for contractor use.

1846.672–2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672–3 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter ''See Attached Distribution List.''

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the ''total'' quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual ''Shipped To'' and ''Marked For'' with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

1846.672–4 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 and 17, enter the words *''CORRECTIONS HAVE BEEN VERIFIED''* on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) MIRRs shall not be corrected for Block 19 and 20 entries.

(d) Clearly mark pages of the MIRR requiring correction with the words *''CORRECTED COPY''*, avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, also mark page 1 *''CORRECTED COPY''*.

(e) Page 1 and only those continuation pages marked *''CORRECTED COPY''* shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672–5 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice in lieu of a commercial form. If the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy *''ORIGINAL INVOICE''* and the remaining three copies *''INVOICE COPY''*.

(c) Forward the four copies to the payment office (Block 12 address).

1846.672–6 Packing list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked ''PACKING LIST''.

1846.672–7 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If acceptance or CQA and acceptance of supplies are required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246–72, Material Inspection and Receiving Report, in solicitations and contracts, except those using simplified acquisition procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared. Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.

1846.703–70 Additional criteria.

In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) Cost of correction or replacement, either by the contractor or by another source, in the absence of a warranty;

(b) The warranty as a deterrent against the furnishing of defective or nonconforming supplies;

(c) Whether the contractor's quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective quality program;

(d) Reliance on ''brand-name'' integrity; and

(e) Whether a warranty is regularly given for a commercial component of a more complex end item.

1846.704 Authority for use of warranties. (NASA paragraphs (1), (2) and (3))

(1) A warranty clause may be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703–70 and FAR 46.703.

(2) Except for the warranty of commercial items (see FAR 12.404 and 46.709), and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the procurement officer or a designee. This decision may be made either for individual acquisitions or classes of acquisitions.

(3) Warranties required by applicable architect-engineer specifications shall be included in construction contracts.

1846.770 Administration.

When notified of a defect in warranted items, the contracting officer should ascertain whether the warranty is currently in effect and ensure that the contractor is given proper and timely notice of the defect.

PART 1847—TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

1847.200 Scope of subpart.

1847.200–70 Charter of aircraft.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.
1847.304–3 Shipments from CONUS for overseas delivery.
1847.304–370 NASA export privilege.
1847.305 Solicitation provisions, contract clauses, and transportation factors.
1847.305–10 Packing, marking, and consignment instructions.
1847.305–13 Transit arrangements.
1847.305–70 NASA contract clauses.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14028, Mar. 25, 1997, unless otherwise noted.

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200–70 Charter of aircraft.

When acquiring aircraft by charter, contracting officers shall comply with NPG 7900.3, Aircraft Operations Management.

[64 FR 51079, Sept. 21, 1999]

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304–3 Shipments from CONUS for overseas delivery.

1847.304–370 NASA export privilege.

NASA has export licensing privileges for moving commodities to foreign destinations. Contracting officers shall request the advice of the Center Export Administrator to ensure full and appropriate use is made of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305–10 Packing, marking, and consignment instructions.

In contracts providing for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state: ''Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor.''

1847.305–13 Transit arrangements. (NASA supplements paragraph (a))

(a)(3)(ii) When the provision at FAR 52.247–56 is used, the solicitation shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

1847.305–70 NASA contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.247–72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b. point is destination and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer may insert a clause substantially as stated at 1852.247–73, Shipment of Government Bills of Lading, in f.o.b. origin solicitations and contracts.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures. (NASA supplements paragraph (d))

(d)(i) The transportation officer in each installation shall establish and maintain a register to reflect adherence to the Cargo Preference Act. The register shall contain data related to shipments made by the installation and by NASA contractors. Where no transportation officer is available, it shall be maintained by the contracting

office. The register shall contain pertinent details of ocean shipments including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. The register shall be maintained current and organized so that adherence to the Cargo Preference Act can be ascertained at all times. To the maximum practicable extent, compliance with the 50-percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis; any deficiencies in maintaining compliance shall be corrected by the end of the calendar year.

(ii) On the basis of the registers maintained under paragraph (d)(i) of this section, the official maintaining the register shall submit quarterly reports reflecting ocean shipments to the Division of National Cargo, Office of Market Development, Maritime Administration, Department of Transportation, Washington, DC, 20590. Negative reports are required when applicable.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247–71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees. The clause shall also be included in applicable subcontracts (including vendor deliveries).

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

Sec.
1848.102 Policies.
1848.103 Processing value engineering change proposals.
1848.104 Sharing arrangements.
1848.104–3 Sharing collateral savings.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14029, Mar. 25, 1997, unless otherwise noted.

Subpart 1848.1—Policies and Procedures

1848.102 Policies. (NASA supplements paragraphs (a) and (f))

(a) The Associate Administrator for Procurement (Code HS) is the approval authority for exemptions.

(f) In calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

1848.103 Processing value engineering change proposals. (NASA supplements paragraph (a))

(a) Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract with the following information:

(i) Date of VECP receipt;

(ii) Date for notifying the contractor of VECP acceptance or rejection;

(iii) Notification of the potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(iv) Request for a technical evaluation, with complete rationale for recommended acceptance or rejection, to include if acceptance is recommended:

(A) An estimate of the type of savings, Government costs, etc., that can be expected from its acceptance;

(B) A procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(C) Additional funds if acceptance of the VECP results in negative instant contract savings.

(v) Technical evaluation due date.

1848.104 Sharing arrangements.

1848.104–3 Sharing collateral savings. (NASA supplements paragraph (a))

(a) The contracting officer is authorized to make the determination that the cost of calculating and tracking

collateral savings will exceed the benefits to be derived.

[65 FR 12485, Mar. 9, 2000]

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts. (NASA supplements paragraphs (a), (b), (c), and (d))

(a)(6) The Associate Administrator for Procurement (Code HS) is the approval authority for exemptions.

(b) The contracting officer shall not insert the clause at FAR 52.248–1, Value Engineering, either with or without its Alternates, in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might benefit from application of VE techniques, the contracting officer shall consider inserting the VE incentive clause at FAR 52.248–1 with any applicable Alternate(s), and establish the applicability of the clause to that part.

(c) Except as prescribed in paragraph (b) of this section, the contracting officer shall insert the clause at FAR 52.248–1 with its Alternate I in initial production contracts for major systems, and major systems R&D contracts for full-scale development, unless the contracting officer determines in writing that its use is inappropriate. Use of Alternate I is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that lend themselves to VE.

(d) The contracting officer shall insert the clause at FAR 52.248–1 with its Alternate II under the conditions prescribed in paragraph (c) of this section

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.
1849.101 Authorities and responsibilities.
1849.101–70 NASA authorities and responsibilities.
1849.101–71 Termination authority.
1849.102 Notice of termination.
1849.102–70 Prior clearance of significant contract terminations.
1849.105 Duties of termination contracting officer after issuance of notice of termination.
1849.105–70 Termination docket checklist.
1849.110 Settlement negotiation memorandum.
1849.110–70 Memorandum contents.
1849.111 Review of proposed settlements.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clause.
1849.505–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14030, Mar. 25, 1997, unless otherwise noted.

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101–70 NASA authorities and responsibilities.

(a) Installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. In addition to the responsibilities described in this part and FAR part 49, such duties should include—

(1) Reviewing NASA Forms 1412, Termination Authority;

(2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract; and

(3) Issuing notices of termination, reinstatement, and recision to contractors;

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the negotiation of termination settlement function shall be made in accordance with FAR subpart 42.2 and 1842.2.

1849.101–71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the

activity initiating the procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

1849.102 Notice of termination.

1849.102–70 Prior clearance of significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through the Headquarters Office of Legislative Affairs (Code LB) before release of the termination notice, or any information on the proposed termination, to the contractor. Proposed terminations expected to result in a reduction of fewer than 100 should be similarly cleared if the installation believes it to be significant.

(b) The contracting officer shall submit the following information to Code LB, and a copy to the Office of Procurement (Code HS), as soon as possible after the decision to terminate is made. Until clearance is obtained, this information shall be treated as ''For Official Use Only'' unless the information is classified.

(1) Contract number.

(2) Date of award.

(3) Type of award.

(4) Name of company.

(5) Nature of contract or end item.

(6) Reasons for the termination.

(7) Contract price of items terminated.

(8) Total number of contractor employees involved, including the Government's estimate of the number that may be discharged.

(9) Anticipated impact on the company and the community.

(10) Name of the community affected.

(11) Area labor category.

(12) Whether contractor is large or small business.

(13) Any known impact on disadvantaged employment programs.

(14) Total number of subcontractors involved and the impact in this area, if known.

(15) Unclassified draft of suggested press release.

(c) To minimize termination costs, Code LB shall act promptly on the request and provide a response not later than two working days after receipt of the information in paragraph (b) of this section.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105–70 Termination docket checklist.

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist.

1849.110 Settlement negotiation memorandum.

1849.110–70 Memorandum contents.

The TCO shall include the following information in the settlement negotiation memorandum. Contractors and subcontractors are encouraged to use this format appropriately modified for subcontract settlements submitted for review and approval.

(a) General information—(1) Identification. (i) Name and address of the contractor and any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.

(ii) Names and titles of contractor and Government personnel who participated in the negotiation.

(2) Description of terminated contract.

(i) Contract number;

(ii) Date of award;

(iii) Contract type;

(iv) General description of contract items;

(v) Total contract price; and

(vi) Applicable contract termination provisions and clause.

(3) Termination notice.

(i) Date of the termination notice;

(ii) Effective date of termination;

(iii) Scope and nature of termination (complete or partial);

(iv) Items terminated;

(v) Unit prices;

(vi) Total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vii) Whether the termination notice was amended and, if so, why;

(viii) Whether the contractor stopped work on the termination effective date

(if it did not, furnish details) and whether subcontracts were terminated promptly;

(ix) Any redirection of common items and return of goods to the contractor's suppliers; and

(x) Extent of contract performance and timely deliveries by the contractor.

(b) Contractor's settlement proposal—(1) Date and amount. Date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) Basis of claim. E.g., inventory, total cost, or other basis, including an explanation of any approvals granted in connection with submission on other than an inventory basis.

(3) Examination of proposal. Types of reviews made and by whom (audit, engineering, legal, or other).

(c) Tabular summary of contractor's claim and the settlement. The cost elements/items, the amounts claimed, the Government recommended position (including auditor, field, and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, previously reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The summary of the negotiated settlement shall include the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(d) Settlement narrative summary.

(1) Contractor's cost.

(2) Profit/Fee.

(3) Settlement expenses not included in the audit.

(4) Number and dollar amount of any subcontractor settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) Total amount of any partial payments.

(6) Total of unliquidated progress or advance payments.

(7) Claims of the Government against the contractor included in settlement agreement reservations.

(8) Assignments, including the name and address of each assignee.

(9) Disposal credits.

(10) Status of plant clearance actions and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations, including a consolidated closing plant clearance report, if applicable.

(11) Status of Government property accountability.

(12) Disposition of any special tooling, if applicable.

(13) Proposed reservations of rights to the Government or to the contractor.

(e) Recommendation. Amount of the gross settlement recommended and TCO statement that it is fair and reasonable to the Government and the contractor.

(f) TCO Signature and date.

1849.111 Review of proposed settlements. (NASA paragraphs (1) and (2))

(1) Settlements shall be reviewed in accordance with center-prescribed procedures.

(2) The TCO may authorize the contract administration office cognizant of a lower-tier subcontractor grant approval or ratification of proposed subcontractor settlements described in FAR 49.108–3(c) that are first reviewed and referred by the prime contractor to the TCO. This procedure is not applicable to settlements between the contractor and its first tier subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clause.

1849.505–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249–72, Termination (Utilities), in all solicitations and contracts for utilities services.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

Sec.
1850.202 Contract adjustment boards.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.
1850.305–70 Submission of request to the Contract Adjustment Board.
1850.306 Disposition.
1850.306–70 Implementation of the Contract Adjustment Board's decision.

Subpart 1850.4—Residual Powers

1850.403 Special procedures for unusually hazardous or nuclear risks.
1850.403–1 Indemnification requests.
1850.403–170 Subcontractor indemnification requests.
1850.403–2 Action on indemnification requests.
1850.470 Lead NASA installation.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14031, Mar. 25, 1997, unless otherwise noted.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.

1850.305–70 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law (Code GG), including in the forwarding letter—

(1) The nature of the case;

(2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

1850.306 Disposition.

1850.306–70 Implementation of the Contract Adjustment Board's decision.

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law (Code GG).

Subpart 1850.4—Residual Powers

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403–1 Indemnification requests. (NASA supplements paragraph (a))

(a) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

1850.403–170 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause

should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.403–1. The prime contractor's request shall provide information responsive to 1850.403–1, FAR 50.403–1, and FAR 50.403–2(a) (1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

1850.403–2 Action on indemnification requests. (NASA supplements paragraphs (a) and (d))

(a) If recommending approval, the contracting officer shall forward the required information to the Associate Administrator for Procurement (Code HS), along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.306, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

(C) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.403–2(a) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

1850.470 Lead NASA installation.

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

Sec.

1851.102 Authorization to use Government supply sources.
1851.102–70 Contractor acquisition of filing cabinets.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14032, Mar. 25, 1997, unless otherwise noted.

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.102 Authorization to use Government supply sources. (NASA supplements paragraph (e)).

(e) The contracting officer shall use substantially the following format for letters authorizing contractor use of Government supply sources:

SUBJECT: Authorization to Lease, Rent, or Purchase from General Services Administration (GSA) Supply Sources
(Contractor's name)
(Address)

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of supplies and/or services under Contract No. available for purchase by Government agencies either directly from GSA stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(ii) The leasing or rental of equipment for use on Contract No. available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the government is not liable on supplies or services purchased under this authorization.

(2)(i) Purchase orders under GSA schedules and contracts shall be placed in accordance with the terms and conditions of the GSA schedule or contract and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the GSA contractor) and shall contain the following statement:

''This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. , pursuant to written authorization dated , a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern.''

(ii) Orders for items in the GSA Supply Catalog shall be placed in accordance with the Catalog and this authorization and shall include the address to which billings are to be sent. Bills are not issued by GSA until after shipment has been made and should therefore be paid promptly. Any necessary adjustments will be made by GSA subsequent to payment. All orders shall contain the following statement:

''This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. , pursuant to written authorization dated , a copy of which (is attached) (you have on file).''

(3) (Insert any other provisions and restrictions.)

(4) The authority hereby granted is not transferable or assignable.

(Contracting Officer)

(e)(3) Contracting officers shall use NPG 4100.1, NASA Materials Inventory Management Manual, to obtain activity address codes to enable use of FEDSTRIP and MILSTRIP.

62 FR 14032, Mar. 25, 1997, as amended at 65 FR 46628, July 31, 2000]

1851.102–70 Contractor acquisition of filing cabinets.

(a) The Contractor officer must approve any planned contractor acquisition of filing cabinets whose title will vest in the Government. The contracting officer shall ensure that the contractor takes the following actions before submitting a request for approval:

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods; and

(4) Take other actions to reduce the need for filing cabinets.

(b) If after taking the actions in paragraphs (a)(1) through (4) of this section, the contractor requires additional filing capacity, it shall submit for contracting officer approval a request to order filing cabinets. This request shall include a discussion of why sufficient additional filing capacity is necessary and shall address the results of the actions in paragraphs (a) (1) through (4) of this section. The contracting officer shall review the request in consultation with the Records Management Officer, the Property and Supply Officer, and the project officer, is appropriate.

(c) If the need for filing cabinets is approved, the contracting officer shall attempt to fill the need by providing

any available excess items of the type required through appropriate property accountability channels. Approved requests that cannot be filled from excess shall be returned to the contractor with an authorization to obtain file cabinets, preferably through GSA.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1852.000 Scope of part.

Subpart 1852.1—Instructions for Using Provisions and Clauses

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1852.103 Identification of provisions and clauses.
1852.103–70 Identification of modified provisions and clauses.
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Subpart 1852.2—Texts of Provisions and Clauses

1852.204–74 Central Contractor Registration.
1852.204–75 Security classification requirements.
1852.204–76 Security Requirements for Unclassified Information Technology Resources
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1852.211–70 Packaging, handling, and transportation.
1852.212–70 Notice of delay.
1852.212–74 Period of performance.
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1852.214–71 Grouping for aggregate award.
1852.214–72 Full quantities.
1852.215–77 Preproposal/pre-bid conference.
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1852.215–79 Price adjustment for ''Make- or-Buy'' changes.
1852.215–81 Proposal page limitations.
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1852.216–73 Estimated cost and cost sharing.
1852.216–74 Estimated cost and fixed fee.
1852.216–75 Payment of fixed fee.
1852.216–76 Award fee for service contracts.
1852.216–77 Award fee for end item contracts.
1852.216–78 Firm fixed price.
1852.216–80 Task ordering procedure.
1852.216–81 Estimated cost.
1852.216–83 Fixed price incentive.
1852.216–84 Estimated cost and incentive fee.
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1852.216–87 Submission of vouchers for payment.
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1852.217–71 Phased acquisition using down-selection procedures.
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1852.219–73 Small business subcontracting plan.
1852.219–74 Use of Rural Area Small Businesses.
1852.219–75 Small business subcontracting reporting.
1852.219–76 NASA 8 percent goal.
1852.219–77 NASA Mentor-Protege program.
1852.219–79 Mentor requirements and evaluation.
1852.223–70 Safety and health.
1852.223–71 Frequency authorization.
1852.223–73 Safety and health plan.
1852.223–74 Drug– and alcohol–free workforce.
1852.223–75 Major breach of safety or security.
1852.225–8 Duty-free entry of space articles.
1852.225–70 Export Licenses.
1852.225–72 [Reserved]
1852.227–11 Patent Rights—Retention by the Contractor (Short Form).
1852.227–14 Rights in data—General.
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1852.227–19 Commercial computer software—Restricted rights.
1852.227–70 New technology.
1852.227–71 Requests for waiver of rights to inventions.
1852.227–72 Designation of new technology representative and patent representative.
1852.227–84 Patent rights clauses.
1852.227–85 Invention reporting and rights—Foreign.
1852.227–86 Commercial computer software—Licensing.
1852.227–87 Transfer of technical data under Space Station International Agreements.
1852.228–70 Aircraft ground and flight risk.
1852.228–71 Aircraft flight risks.
1852.228–72 Cross–waiver of liability for space shuttle services.
1852.228–73 Bid bond.
1852.228–75 Minimum insurance coverage.
1852.228–76 Cross-waiver of liability for Space Station Activities.
1852.228–78 Cross–waiver of liability for NASA Expendable Launch Vehicle launches.
1852.228–80 Insurance—Immunity From Tort Liability.
1852.228–81 Insurance—Partial Immunity From Tort Liability.

1852.228–82 Insurance—Total Immunity From Tort Liability.
1852.231–70 Precontract costs.
1852.231–71 Determination of compensation reasonableness.
1852.232–70 NASA Modification of FAR 52.232–12.
1852.232–77 Limitation of funds (Fixed-Price Contract).
1852.232–79 Payment for on-site preparatory costs.
1852.232–81 Contract funding.
1852.232–82 Submission of requests for progress payments.
1852.233–70 Protests to NASA.
1852.235–70 Center for AeroSpace Information—final scientific and technical reports.
1852.235–71 Key personnel and facilities.
1852.235–72 Instructions for responding to NASA Research Announcements.
1852.236–71 Additive or deductive items.
1852.236–72 Bids with unit prices.
1852.236–73 Hurricane plan.
1852.236–74 Magnitude of requirement.
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1852.237–70 Emergency evacuation procedures.
1852.237–71 Pension portability.
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1852.241–70 Renewal of contract.
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1852.242–71 Travel outside of the United States.
1852.242–72 Observance of legal holidays.
1852.242–73 NASA contractor financial management reporting.
1852.242–74 Notice of Earned Value Management System.
1852.242–75 Earned Value Management Systems.
1852.242–76 Modified Cost Performance Report.
1852.242–77 Modified Cost Performance Report plans.
1852.243–70 Engineering change proposals.
1852.243–71 Shared savings.
1852.243–72 Equitable adjustments.
1852.244–70 Geographic participation in the aerospace program.
1852.245–70 Contractor requests for government-owned equipment.
1852.245–71 Installation-accountable government property.
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1852.245–73 Financial reporting of NASA property in the custody of contractors.
1852.245–74 Contractor accountable on-site Government property.
1852.245–75 Title to equipment.
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1852.245–79 Use of Government-owned property.
1852.245–80 Use of Government production and research property on a no-charge basis.
1852.246–70 Mission Critical Space System Personnel Reliability Program.
1852.246–71 Government contract quality assurance functions.
1852.246–72 Material Inspection and Receiving Report.
1852.246–73 Human space flight item.
1852.247–71 Protection of the Florida manatee.
1852.247–72 Advance notice of shipment.
1852.247–73 Shipment by Government bills of lading.
1852.249–72 Termination (utilities).

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.
1852.301 Solicitation provisions and contract clauses (Matrix).

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.

1852.000 Scope of part.

This part, in conjunction with FAR Part 52—

(a) Sets forth the provisions and clauses prescribed in the NFS,

(b) Gives instructions for their use, and

(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

[61 FR 40547, Aug. 5, 1996]

Subpart 1852.1—Instructions for Using Provisions and Clauses

SOURCE: 61 FR 40547, Aug. 5, 1996, unless otherwise noted.

1852.101 Using FAR part 52. (NASA supplements paragraphs (b) and (e))

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of subpart 1801.3 are met.

(e)(1) The NFS matrix in subpart 1852.3 is formatted similarly to that in

the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the ''required-when-applicable'' and ''optional'' categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses. (NASA supplements paragraphs (b) and (c))

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b) (i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, DFRC, GRC, GSFC, JSC, KSC, LARC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with ''52.2,'' with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from −90 to −199. For example, the first Johnson Space Center (JSC) provision or clause relating to part 36 of the FAR or NFS shall be JSC 52.236–90, the second JSC 52.236–91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

(A) I.2 BID ENVELOPES (GSFC 52.214–90) (AUGUST 1987) This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number (''I.2'') designates the UCF section and the sequential clause within that section ''GSFC 52.214–90'' specifies the clause number.

(B) GSFC 52.214–90—Bid Envelopes (AUGUST 1987) This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(C) Contracting officers shall not number provisions and clauses developed for individual acquisitions only. For example, ''F.3 Delivery Procedures for Special Hardware'' cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

[61 FR 40547, Aug. 5, 1996, as amended at 64 FR 19926, Apr. 23, 1999]

1852.103–70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown in this subsection. This format shall be used both for incorporation by reference and when using full text.

''52.232–28 Electronic Funds Transfer Payment Methods (APR 1989)—as modified by NASA FAR Supplement 1832.908(a)''

1852.104 Procedures for modifying and completing provisions and clauses.

NFS provisions and clauses shall not be modified unless authorized by the NFS. When authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1852.2—Texts of Provisions and Clauses

1852.204–74 Central Contractor Registration.

As prescribed in 1804.7404, insert the following clause:

CENTRAL CONTRACTOR REGISTRATION (AUG 2000)

(a) *Definitions.* As used in this clause—

(1) ''Central Contractor Registration (CCR) database'' means the primary DoD repository for contractor information required for the conduct of business with NASA.

(2) ''Data Universal Number System (DUNS) number'' means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) ''Data Universal Numbering System +4 (DUNS+4) number'' means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying sub-units or affiliates of the parent business concern.

(4) ''Commercial Government and Entity Code (CAGE Code)'' means—

(i) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(ii) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that is recorded and maintained by DLIS in the CAGE master file.

(5) ''Registered in the CCR database'' means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding CAGE code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors performing work outside of the United States.

(2) The Contracting Officer will verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award after March 31, 2001.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements via the Internet at http://www.ccr2000.com or by calling 888-CCR–2423 (888–227–2423).

(End of clause)

[65 FR 50153, Aug. 17, 2000]

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment [Insert the attachment number of the DD Form 254].

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.204–76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470–4, insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JULY, 2000)

(a) The Contractor shall comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, Security of Information Technology, and NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology. These policies apply to all IT systems and networks under NASA's purview operated by or on behalf of the Federal Government, regardless of location.

(b)(1) The Contractor shall ensure compliance by its employees with Federal directives and guidelines that deal with IT Security including, but not limited to, OMB Circular A–130, Management of Federal Information Resources, OMB Circular A–130 Appendix III, Security of Federal Automated Information Resources, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), and all applicable Federal Information Processing Standards (FIPS).

(2) All Federally owned information is considered sensitive to some degree and must be appropriately protected by the Contractor as specified in applicable IT Security Plans. Types of sensitive information that may be found on NASA systems that the Contractor

may have access to include, but are not limited to—

(i) Privacy Act information (5 U.S.C. 552a *et seq.*);

(ii) Export Controlled Data, (e.g. Resources protected by the International Traffic in Arms Regulations (22 CFR Parts 120–130)).

(3) The Contractor shall ensure that all systems connected to a NASA network or operated by the Contractor for NASA conform with NASA and Center security policies and procedures.

(c)(1) The Contractor's screening of Contractor personnel will be conducted in accordance with NPG 2810.1, Section 4.5 for personnel requiring unescorted or unsupervised physical or electronic access to NASA systems, programs, and data.

(2) The Contractor shall ensure that all such employees have at least a National Agency Check investigation. The Contractor shall submit a personnel security questionnaire (NASA Form 531), Name Check Request for National Agency Check (NAC) investigation, and Standard Form 85P, Questionnaire for Public Trust Positions (for specified sensitive positions), and a Fingerprint Card (FD–258 with NASA overprint in Origin Block) to the Center Chief of Security for each Contractor employee requiring screening. The required forms may be obtained from the Center Chief of Security. In the event that the NAC is not satisfactory, access shall not be granted. At the option of the Government, background screenings may not be required for employees with recent or current Federal Government investigative clearances.

(3) The Contractor shall have an employee checkout process that ensures—

(i) Return of badges, keys, electronic access devices and NASA equipment;

(ii) Notification to NASA of planned employee terminations at least three days in advance of the employee's departure. In the case of termination for cause, NASA shall be notified immediately. All NASA accounts and/or network access granted terminated employees shall be disabled immediately upon the employee's separation from the Contractor; and

(iii) That the terminated employee has no continuing access to systems under the operation of the Contractor for NASA. Any access must be disabled the day the employee separates from the Contractor.

(4) Granting a non-permanent resident alien (foreign national) access to NASA IT resources requires special authorization. The Contractor shall obtain authorization from the Center Chief of Security prior to granting a non-permanent resident alien access to NASA IT systems and networks.

(d)(1) The Contractor shall ensure that its employees with access to NASA information resources receive annual IT security awareness and training in NASA IT Security policies, procedures, computer ethics, and best practices.

(2) The Contractor shall employ an effective method for communicating to all its employees and assessing that they understand any Information Technology Security policies and guidance provided by the Center Information Technology Security Manager (CITSM) and/or Center CIO Representative as part of the new employee briefing process. The Contractor shall ensure that all employees represent that they have read and understand any new Information Technology Security policy and guidance provided by the CITSM and Center CIO Representative over the duration of the contract.

(3) The Contractor shall ensure that its employees performing duties as system and network administrators in addition to performing routine maintenance possess specific IT security skills. These skills include the following:

(i) Utilizing software security tools.

(ii) Analyzing logging and audit data.

(iii) Responding and reporting to computer or network incidents as per NPG 2810.1.

(iv) Preserving electronic evidence as per NPG 2810.1.

(v) Recovering to a safe state of operation.

(4) The Contractor shall provide training to employees to whom they plan to assign system administrator roles. That training shall provide the employees with a full level of proficiency to meet all NASA system administrators' functional requirements. The Contractor shall have methods or processes to document that employees have mastered the training material, or have the required knowledge and skills. This applies to all system administrator requirements.

(e) The Contractor shall promptly report to the Center IT Security Manager any suspected computer or network security incidents occurring on any system operated by the Contractor for NASA or connected to a NASA network. If it is validated that there is an incident, the Contractor shall provide access to the affected system(s) and system records to NASA and any NASA designated third party so that a detailed investigation can be conducted.

(f) The Contractor shall develop procedures and implementation plans that ensure that IT resources leaving the control of an assigned user (such as being reassigned, repaired, replaced, or excessed) have all NASA data and sensitive application software permanently removed by a NASA-approved technique. NASA-owned applications acquired via a ''site license'' or ''server license'' shall be removed prior to the resources leaving NASA's use. Damaged IT storage media for which data recovery is not possible shall be degaussed or destroyed. If the assigned task is to be assumed by another duly authorized person, at the Government's option, the IT resources may remain

intact for assignment and use of the new user.

(g) The Contractor shall afford NASA, including the Office of Inspector General, access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data, and to preserve evidence of computer crime.

(h)(1) The Contractor shall document all vulnerability testing and risk assessments conducted in accordance with NPG 2810.1 and any other IT security requirements specified in the contract or as directed by the Contracting Officer.

(2) The results of these tests shall be provided to the Center IT Security Manager. Any Contractor system(s) connected to a NASA network or operated by the Contractor for NASA may be subject to vulnerability assessment or penetration testing as part of the Center's IT security compliance assessment and the Contractor shall be required to assist in the completion of these activities.

(3) A decision to accept any residual risk shall be the responsibility of NASA. The Contractor shall notify the NASA system owner and the NASA data owner within 5 working days if new or unanticipated threats or hazards are discovered by the Contractor, made known to the Contractor, or if existing safeguards fail to function effectively. The Contractor shall make appropriate risk reduction recommendations to the NASA system owner and/or the NASA data owner and document the risk or modifications in the IT Security Plan.

(i) The Contractor shall develop a procedure to accomplish the recording and tracking of IT System Security Plans, including updates, and IT system penetration and vulnerability tests for all NASA systems under its control or for systems outsourced to them to be managed on behalf of NASA. The Contractor must report the results of these actions directly to the Center IT Security Manager.

(j) When directed by the Contracting Officer, the Contractor shall submit for NASA approval a post-award security implementation plan outlining how the Contractor intends to meet the requirements of NPG 2810.1. The plan shall subsequently be incorporated into the contract as a compliance document after receiving Government approval. The plan shall demonstrate thorough understanding of NPG 2810.1 and shall include as a minimum, the security measures and program safeguards to ensure that IT resources acquired and used by Contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

(5) Document and follow a virus protection program for all IT resources under its control; and

(6) Document and follow a network intrusion prevention program for all IT resources under its control.

(k) Prior to selecting any IT security solution, the Contractor shall consult with their Center IT Security Manager to ensure interoperability and compatibility with other systems with which there is a data or system interface requirement.

(l) The Contractor shall comply with all Federal and NASA encryption requirements for NASA flight programs (*e.g.*, secure flight termination systems, encryption for satellite uplinks, encryption for flight and satellite command and control for both up and down link) and involve the Center Communications Security (COMSEC) Manager when selecting encryption solutions.

(m) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in this clause are applicable to the performance of the subcontract.

(End of clause)

[65 FR 43718, July 14, 2000]

1852.208–81 Restrictions on printing and duplicating.

As prescribed in 1801.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (AUG 1993)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) ''Duplicating/copying'' is not considered to be printing. It is material produced by duplicating equipment employing the lithographic process and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes not requiring the use of negatives or metal plates. The Contractor is authorized to duplicate production unites provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10¾ by 14¼ inches. A ''production unit'' is one sheet, size 8½ × 11 inches (215 × 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing or duplicating/copying in excess of the limits set forth above are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating/copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations and NFS 1808.802.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.209–70 Product removal from Qualified Products List.

As prescribed in 1809.206–71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DEC 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–71 Limitation of future contracting.

As prescribed in 1809.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507–2:

LIMITATION OF FUTURE CONTRACTING (DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements or work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime of first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to complete with those other companies.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DEC 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.210–70 Brand name or equal.

As prescribed in 1810.011–70(a), insert the following provision:

BRAND NAME OR EQUAL (DEC 1988)

(a) As used in this provision, ''brand name'' means identification of products by make and model. The term ''bid'' means ''offer'' if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a ''brand name or equal'' description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an ''equal'' product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an ''equal'' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) Caution to Offerors: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991]

1852.211–70 Packaging, handling, and transportation.

As prescribed in 1811.404–70, insert the following clause:

PACKAGING, HANDLING, AND TRANSPORTATION—JUNE 2000

(a) The Contractor shall shall comply with NPG 6000.1E, ''Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components'', dated April 26, 1999, as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[65 FR 37062, June 13, 2000]

1852.212–70 Notice of delay.

As prescribed at 1812.104–70(a), insert the following clause:

NOTICE OF DELAY (DEC 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the

contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

(End of clause)

1852.212–74 Period of performance.

As prescribed in 1812.104–70(e), insert the following clause:

PERIOD OF PERFORMANCE (DEC 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.214–70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201–670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING

Descriptive Literature

(Dec 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that ''Data are subject to change without notice,'' ''Prices subject to change without notice,'' or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202–5.]

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–71 Grouping for Aggregate Award.

As prescribed in 1814.201–670(c), insert the following provision:

GROUPING FOR AGGREGATE AWARD (MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

[Insert the item numbers and/or descriptions].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–72 Full quantities.

As prescribed in 1814.201–670(b), insert the following provision:

FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.215–77 Preproposal/pre-bid conference.

As prescribed in 1815.209–70(a), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (DEC 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998]

1852.215–78 Make or buy program requirements.

As prescribed in 1815.408–70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS (FEB 1998)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.407–2. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as ''must make,'' ''must buy,'' or ''can either make or buy.''

(c) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or ''buy.''

(d) Reasons for (i) categorizing items and work effort as ''must make'' or ''must buy'' and (ii) proposing to ''make'' or ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 63 FR 32764, June 16, 1998]

1852.215–79 Price adjustment for "Make- or-Buy" changes.

As prescribed in 1815.407–70(b), insert the following clause:

PRICE ADJUSTMENT FOR ''MAKE-OR-BUY'' CHANGES (DEC 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1852.215–81 Proposal page limitations.

As prescribed in 1815.209–70(d), insert the following provision:

PROPOSAL PAGE LIMITATIONS (FEB 1998)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)

(b) A page is defined as one side of sheet, 8½'' x 11'', with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8½'' x 11'' pages. The metric standard format most closely approximating the described standard 8½'' x 11'' size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1852.215–84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN

June 2000

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, [Insert name, address, telephone number, facsimile number, and e-mail address]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202–358–0422, facsimile 202–358–3083, e-mail sthomps1@hq.nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

ALTERNATE I

June 2000

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

[62 FR 3484, Jan. 23, 1997, as amended at 65 FR 38777, June 22, 2000]

1852.216–73 Estimated cost and cost sharing.

As prescribed in 1816.307–70(a), insert the following clause:

ESTIMATED COST AND COST SHARING (DEC 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the [insert ''Limitation of Cost'' or ''Limitation of Funds''] clause, the total estimated cost to the Government is hereby established as $ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307–70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE (DEC 1991)

The estimated cost of this contract is exclusive of the fixed fee of . The total estimated cost and fixed fee is .

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–75 Payment of fixed fee.

As prescribed in 1816.307–70(c), insert the following clause:

PAYMENT OF FIXED FEE (DEC 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–76 Award Fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS (JUNE 2000)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with *[identify performance evaluation plan].* The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The *[insert payment office]* will make payment based on *[Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].*

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Office considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts].* Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [*insert ''will'' or ''will not'', as applicable*] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [*insert ''will'' or ''will not'', as appropriate*] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[62 FR 3484, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997; 63 FR 13134, Mar. 18, 1998; 65 FR 38777, June 22, 2000]

1852.216–77 Award fee for end item contracts.

As prescribed in 1816.406–70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS

(JUNE 2000)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is ''poor/unsatisfactory.''

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with *[identify performance evaluation plan]* to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-

evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in *[Insert ''monthly'', or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.*

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocation to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will *[insert ''not'' if applicable]* be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a *[insert the frequency of provisional payments (not more often than monthly)]* basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see *[insert applicable cite]*). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is ''poor/unsatisfactory,'' the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is ''poor/unsatisfactory'', any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].*

(d) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[62 FR 3485, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997; 65 FR 38778, June 22, 2000]

1852.216–78 Firm fixed price.

As prescribed in 1816.202–70, insert the following clause:

FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is $ [Insert the appropriate amount].

(End of clause)

[62 FR 3485, Jan. 23, 1997]

1852.216–80 Task ordering procedure.

As prescribed in 1816.506–70, insert the following clause:

TASK ORDERING PROCEDURES (OCT 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

ALTERNATE I

(OCT 1996)

As prescribed in 1816.506–70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

(2) Task ceiling price.

(3) Cost and hours incurred to date for each issued task.

(4) Costs and hours estimated to complete each issued task.

(5) Significant issues/problems associated with a task.

(6) Cost summary of the status of all tasks issued under the contract.

[62 FR 3485, Jan. 23, 1997]

1852.216–81 Estimated cost.

As prescribed in 1816.307–70(d), insert the following clause:

ESTIMATED COST (DEC 1988)

The total estimated cost for complete performance of this contract is $ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract.

(End of clause)

[62 FR 3486, Jan. 23, 1997]

1852.216–83 Fixed price incentive.

As prescribed in 1816.406–70(c), insert the following clause:

FIXED PRICE INCENTIVE (OCT 1996)

The target cost of this contract is $. The Target profit of this contract is $. The target price (target cost plus target profit) of this contract is $. [The ceiling price is $.]

The cost sharing for target cost underruns is: Government percent; Contractor percent.

The cost sharing for target cost overruns is: Government percent; Contractor percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–84 Estimated cost and incentive fee.

As prescribed in 1816.406–70(d), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (OCT 1996)

The target cost of this contract is $. The target fee of this contract is $. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $.

The maximum fee is $.

The minimum fee is $.

The cost sharing for cost underruns is: Government percent; Contractor percent.

The cost sharing for cost overruns is: Government percent; Contractor percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–85 Estimated cost and award fee.

As prescribed in 1816.406–70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE (SEP 1993)

The estimated cost of this contract is $. The maximum available award fee, excluding base fee, if any, is $. The base fee is $. Total estimated cost, base fee, and maximum award fee are $.

(End of clause)

Alternate I

(September 1993)

As prescribed in 1816.405–70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is $. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$*total potential award fee amount, including any base fee)].*

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(e), insert the following clause:

SUBMISSION FOR VOUCHERS FOR PAYMENT (MAR 1998)

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b)(1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to: [Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer. (c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to: [Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to: [insert the mailing address for submission of fee vouchers] This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[63 FR 15321, Mar. 31, 1998]

1852.216–88 Performance incentive.

As prescribed in 1816.406–70(f), insert the following clause:

PERFORMANCE INCENTIVE (JAN 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called ''unit(s) of measurement,'' e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is

achieved but not exceeded. The standard performance level for (1) is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ (3) per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ (5) . The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within *[insert number of months or years]* after the date of hardware acceptance by the Government, the Contractor will be paid *[insert percentage]* of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402–270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402–270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–89 Assignment and release forms.

As prescribed in 1816.307–70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS (JUL 1997)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment, and FAR clause 52.216–13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release;

NASA Form 779, Assignee's Release;

NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253–1, Computer Generated Forms.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.217–70 Property administration and reporting.

As prescribed in 1817.7002–4 insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DEC 1988)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request shall be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

1852.217–71 Phased acquisition using down-selection procedures.

As prescribed in 1817.7302(a), insert the following clause:

PHASED ACQUISITION USING DOWN-SELECTION PROCEDURES (MAY 2000)

(a) This solicitation is for the acquisition of [insert Program title]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the [insert purpose of phase]. Phase 2 is for [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: [(insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000]

1852.217–72 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1817.7302(b), insert the following clause:

PHASED ACQUISITION USING PROGRESSIVE COMPETITION DOWN-SELECTION PROCEDURES (MAY 2000)

(a) This solicitation is for the acquisition of [insert Program title]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase

1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the [insert purpose of phase]. Phase 2 is for [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of [indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the

Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source to all the material furnished to the Phase 1 contractors that is necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: [insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase 2.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000]

1852.219–73 Small business subcontracting plan.

As prescribed in 1819.708–70(a), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN (MAY 1999)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, ''Small Business Subcontracting Plan.'' The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25215, May 11, 1999]

1852.219–74 Use of rural area small businesses.

As prescribed in 1819.7103, insert the following clause:

USE OF RURAL AREA SMALL BUSINESS (SEP 1990)

(a) Definitions.

Rural area means any county with a population of fewer than twenty thousand individuals.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

(End of clause)

[55 FR 47479, Nov. 14, 1990]

1852.219–75 Small business subcontracting reporting.

As prescribed in 1819.708–70(b), insert the following clause:

SMALL BUSINESS SUBCONTRACTING REPORTING (MAY 1999)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form

(SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.

(b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219–9.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25216, May 11, 1999]

1852.219–76 NASA 8 percent goal.

As prescribed in 1819.7003 insert the following clause:

NASA 8 PERCENT GOAL (JUL 1997)

(a) Definitions.

Historically Black Colleges or University, as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

Small disadvantaged business concern, as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

Women-owned small business concern, as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219–77 NASA Mentor-Protege program.

As prescribed in 1819.7219(a), insert the following clause:

NASA MENTOR-PROTEGE PROGRAM (MAY 1999)

(a) Prime contractors, including certain small businesses, are encouraged to participate in the NASA Mentor-Protege Program for the purpose of providing developmental assistance to eligible protege entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

(1) Mentor firms, which are large prime contractors with at least one active subcontracting plan or eligible small businesses;

(2) Proteges, which are subcontractors to the prime contractor, include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(3) Mentor-protege agreements, approved by the NASA Office of Small and Disadvantaged Business Utilization (OSDBU);

(4) In contracts with award fee incentives, potential for payment of additional fee for voluntary participation and successful performance in the Mentor-Protege Program.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing

technical, managerial and financial assistance to aid proteges in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSDBU, Washington, DC 20546, (202) 358–2088, for further information.

(End of clause)

[62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 10572, Mar. 5, 1999; 64 FR 25216, May 11, 1999]

1852.219–79 Mentor requirements and evaluation.

As prescribed in 1819.7219(b), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (JUL 1997)

(a) The purpose of the NASA Mentor-Protege Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as proteges. Eligible proteges include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of proteges as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protege as defined in the agreement;

(3) To what extent the protege has met the developmental objectives in the agreement; and

(4) To what extent the firm's participation in the Mentor-Protege Program resulted in the protege receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protege program manager, NASA Headquarters OSDBU, to include information as outlined in paragraph (b).

(d) The mentor will notify the OSDBU and the contracting officer, in writing, as least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program or upon receipt of a protege's notice to withdraw from the Program;

(e) Mentor and protege firms will submit a ''lessons learned'' evaluation to the NASA OSDBU at the conclusion of the contract. At the end of each year in the Mentor-Protege Program, the mentor and protege, as appropriate, will formally brief the NASA Mentor-Protege program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments as pertains to the approved agreement.

(f) NASA may terminate mentor-protege agreements for good cause and exclude mentor or protege firms from participating in the NASA program. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h).

(End of clause)

[62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1852.223–70 Safety and health.

As prescribed in 1823.7004(c), insert the following clause:

SAFETY AND HEALTH (JULY 2000)

(a) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(b) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time

occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of $25,000 or more, or Close Call (a situation or occurrence with no injury, no damage, or only minor damage (less than $1,000) but possesses the potential to cause any category of mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(d) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(e)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (e)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(f) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that—

(1) Amount to $1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required);

(2) Require construction, repair, or alteration in excess of $25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(g) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(h) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991; 58 FR 51142, Sept. 30, 1993; 61 FR 5315, Feb. 12, 1996; 62 FR 14033, Mar. 25, 1997; 65 FR 37060, June 13, 2000]

1852.223–71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DEC 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223–73 Safety and health plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (JULY 2000)

The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety Manual, Appendix H). The plan must include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of

contractor employees and to ensure the safety of all working conditions throughout the performance of the contract. The plan must similarly address safety and occupational health for subcontractor employees for any proposed subcontract whose value is expected to exceed $500,000, including commercial services and services provided in support of a commercial item. Also, when applicable, the plan must address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of NASA employees and the public. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 57 FR 40856, Sept. 8, 1992; 61 FR 55758. Oct. 29, 1996; 62 FR 14033, Mar. 25, 1997; 65 FR 37061, June 13, 2000]

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–3, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (MAR 1996)

(a) *Definitions.* As used in this clause the terms ''employee,'' ''controlled substance,'' ''employee in a sensitive position,'' and ''use, in violation of applicable law or Federal regulation, of alcohol'' are as defined in 48 CFR 1823.570–2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug Testing Programs,'' in which references to ''DOT'' shall be read as ''NASA'', and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will

unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[61 FR 7226, Feb. 27, 1996]

1852.223–75 Major breach of safety or security.

As prescribed in 1823.7001(d), insert the following clause:

MAJOR BREACH OF SAFETY OR SECURITY (JULY 2000)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the contractor that consists of an accident, incident, or exposure resulting in a fatality; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

[65 FR 37061, June 13, 2000]

1852.225–8 Duty-free entry of space articles.

As prescribed in 1825.1101(e), add the following paragraph (k) to the basic clause at FAR 52.225–8:

(k) The following supplies will be given duty-free entry:
[Insert the supplies that are to be accorded duty-free entry.]
(END OF ADDITION)

[65 FR 10033, Feb. 25, 2000]

1852.225–70 Export Licenses.

As prescribed in 1825.1103–70(b), insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

ALTERNATE 1 (FEB 2000)

As prescribed in 1825.1103–70(b), add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer

or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[65 FR 6916, Feb. 11, 2000, as amended at 65 FR 10033, Feb. 25, 2000]

1852.225–72 [Reserved]

1852.227–11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.303–70(a), modify the clause at FAR 52.227–11 by adding the following subparagraph (5) to paragraph (f) of the basic clause. In addition, use the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(5) The contractor shall provide the contracting officer the following:

(i) A listing every 12 months (or such longer period as the contracting officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(2) The contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

[55 FR 27089, June 29, 1990, as amended at 62 FR 36734, July 9, 1997]

1852.227–14 Rights in data—General.

As prescribed in 1827.409(a), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227–14:

(3)(i) The Contractor agrees not to establish claims to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word ''establish'' is used in this clause, with reference to a claim to copyright, it shall be construed to mean ''assert''.

(End of addition)

[55 FR 27089, June 29, 1990, as amended at 60 FR 47312, Sept. 12, 1995; 62 FR 36734, July 9, 1997]

1852.227–17 Rights in data—Special works.

As prescribed in 1827.409(i), add the following paragraph (f) to the basic clause at FAR 52.227–17:

(f) Whenever the words ''establish'' and ''establishment'' are used in this clause, with reference to a claim to copyright, they shall be construed to mean ''assert'' and ''assertion'', respectively.

(End of addition)

[60 FR 47312, Sept. 12, 1995. Redesignated at 61 FR 5315, Feb. 12, 1996, as amended at 62 FR 36734, July 9, 1997]

1852.227–19 Commercial computer software—Restricted rights.

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227–19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227–19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990, as amended at 55 FR 47480, Nov. 14, 1990; 55 FR 53153, Dec. 27, 1990; 62 FR 36734, July 9, 1997]

1852.227–70 New technology.

As prescribed in 1827.303–70(b), insert the following clause:

NEW TECHNOLOGY (NOV 1998)

(a) *Definitions.*

Administrator, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Contract, as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this clause, means conception or first actual reduction to practice; *provided,* that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Nonprofit organization, as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

Small business firm, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors will be used.)

Subject invention, as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will

notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.* (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting

Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to section 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2)

of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227–11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989; 60 FR 40521, Aug. 9, 1995; 62 FR 36734, July 9, 1997; 63 FR 63209, Nov. 12, 1998]

1852.227–71 Requests for waiver of rights to inventions.

As prescribed in 1827.30–70(c), insert the following provision in all solicitations that include the clause at 1852.227–70, New Technology:

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 1984)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the

NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997]

1852.227–72 Designation of new technology representative and patent representative.

As prescribed in 1827.303–70(d), insert the following clause:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JUL 1997)

(a) For purposes of administration of the clause of this contract entitled ''New Technology'' or ''Patent Rights—Retention by the Contractor (Short Form),'' whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office code	Address (including zip code)
	New Technology Representative Patent Representative	

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a ''New Technology'' clause or ''Patent Rights—Retention by the Contractor (Short Form)'' clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305–370 of the NASA FAR Supplement.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.227–84 Patent rights clauses.

The contracting officer shall insert the following provision as prescribed in 1827.303–70(e):

PATENT RIGHTS CLAUSES (DEC 1989)

This solicitation contains the patent rights clauses of FAR 52.227–11 (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227–11 shall not apply.

(End of Provision)

[54 FR 53631, Dec. 29, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227–85 Invention reporting and rights—Foreign.

As prescribed in 1827.303–70(f), insert the following clause:

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 1986)

(a) As used in this clause, the term ''invention'' means any invention, discovery or improvement, and ''made'' means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227–86 Commercial computer software—Licensing.

As prescribed in 1827.409–70, insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—LICENSING (DEC 1987)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or

otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraph (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2) (i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in paragraphs (d)(2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in paragraphs (d) (2), (3), and (4) of this clause.

End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 62 FR 36735, July 9, 1997]

1852.227–87 Transfer of technical data under Space Station International Agreements.

As prescribed at 1827.670–2, insert the following clause:

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENT (APR 1989)

1. In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.

2. The Contractor agrees, when specifically directed in writing by the Contracting Officer, or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the Contracting Officer or designated representative.

3. It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph 2 of this clause, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.

4. Nothing contained in this clause affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the Rights in Data clause of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that clause.

5. The Contractor agrees to include this clause, including this paragraph 5, in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

(End of clause)

[54 FR 39375, Sept. 26, 1989]

1852.228–70 Aircraft ground and flight risk.

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as

follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of ''aircraft'' should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of ''in the open'' may be modified to include ''hush houses,'' test hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (OCT 1996)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

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

(1) Unless otherwise specifically provided in the Schedule, ''aircraft'' includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) ''In the open'' means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) ''Flight'' includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) ''Contractor's premises'' means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) ''Operation'' means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) ''Contractor's managerial personnel'' means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all

of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for

the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or

subrogation in favor of the Government) in obtaining recovery.

[61 FR 55772, Oct. 29, 1996]

1852.228–71 Aircraft flight risks.

(a) As prescribed in 1828.311–2, insert the following clause:

AIRCRAFT FLIGHT RISKS (DEC 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, ''aircraft'' includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) ''Flight'' includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 61 FR 55774, Oct. 29, 1996]

1852.228–72 Cross-waiver of liability for space shuttle services.

As prescribed in 1828.371 (b) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES (SEP 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to Contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Contractors* and *Subcontractors* include suppliers of any kind.

(2) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) *Party* means a person or entity that signs an agreement involving a Space Shuttle service;

(4) *Payload* means all property to be flown or used on or in the Space Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this contract. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraph (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in (c)(1)(i) and (c)(1)(ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protection Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[59 FR 65730, Dec. 21, 1994]

1852.228–73 Bid bond.

As prescribed in 1828.101–70, insert the following provision:

BID BOND (OCT 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.228–1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228–75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by 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 the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

''The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy.''

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228–76 Cross-waiver of liability for space station activities.

As prescribed in 1828.371(d) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES (DEC 1994)

(a) The Intergovernmental Agreement for the Space Station contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this clause is to extend this cross-waiver requirement to Contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) *Launch Vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) *Partner State* means each contracting party for which the ''Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station'' (the ''Intergovernmental Agreement'') has entered into force, in accordance with Article 25 of the Intergovermental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA) and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified to the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) *Payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(5) *Protected Space Operations* means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this contract. ''Protected Space Operations'' also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles,

payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A Partner State's Contractors or subcontractors at any tier;

(ii) A Partner State's users or customers at any tier; or

(iii) A Contractor or subcontractor of a Partner States's user or customer at any tier.

(7) *Contractors* and *Subcontractors* include suppliers of any kind.

(c) (1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(i) Any Partner State other than the United States;

(ii) A related entity of any Partner State other than the United States; and

(iii) The employee of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[59 FR 65730, Dec. 21, 1994]

1852.228–78 Cross-waiver of liability for NASA expendable launch vehicle launches.

As prescribed in 1828.371 (c) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES (SEP 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Contractors* and *Subcontractors* include suppliers of any kind.

(2) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) *Party* means a person or entity that signs an agreement involving an ELV launch;

(4) *Payload* means all property to be flown or used on or in the ELV; and

(5) *Protected Space Operations* means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the contract. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for

ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; and

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the persons, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

(End of clause)

[59 FR 56731, Dec. 21, 1994]

1852.228–80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311–270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY (SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228–7, Insurance—Liability To Third Persons, and the associated NFS clause 1852.228–81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution. the clause at NFS 1852.228–82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

[65 FR 54440, Sept. 8, 2000]

1852.228–81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311–270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor

for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228–7, Insurance—Liability To Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228–7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.228–82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311–270(d), insert the following clause:

INSURANCE—TOTAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

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

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

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.231–70 Precontract costs.

As prescribed in 1831.205–70, insert the following clause:

PRECONTRACT COSTS (JUN 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after in an amount not to exceed $ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[60 FR 29505, June 5, 1995]

1852.231–71 Determination of compensation reasonableness.

As prescribed at 1831.205–671, insert the following provision.

DETERMINATION OF COMPENSATION REASONABLENESS (MAR 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222–46, ''Evaluation of Compensation for Professional Employees.''

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fail within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

[62 FR 4474, Jan. 30, 1997]

1852.232–70 NASA modification of FAR 52.232–12.

As prescribed at 1832.412–70, make the following modifications:

NASA MODIFICATION OF FAR 52.232–12, (MAR 1998

(a) Basic Clause. (1) In paragraph (e), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $ at any time outstanding. In addition. * * *.''

(2) In paragraph (m)(1), delete ''in the form prescribed by the administering office'' and substitute ''and Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation.''

(b) Alternate II (if incorporated in the contract). In paragraph (e), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $ at any time outstanding. In addition. * * *.''

(c) Alternate V (if incorporated in the contract). (1) Substitute the following for paragraph (b): ''(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contracting office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in Part 31, or subpart 1831.2.''

(2) In paragraph (d), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $ at any time outstanding. In addition. * * *.''

(3) In paragraph (j)(1), insert between ''statements,'' and ''and'' ''together with Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation''

(4) If this is a Phase I contract awarded under the SBIR or STTR programs, delete paragraph (a) and substitute the following: ''(a) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked ''Small Business Innovation Research Contract'' or ''Small Business Technology Transfer Contract,'' as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments.''

(End of clause)

[63 FR 14040, Mar. 24, 1998]

1852.232–77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705–270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items through , the sum of $ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until .

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an

agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds 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.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before 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 shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

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

(End of clause)

1852.232–79 Payment for on-site preparatory costs.

As prescribed in 1832.111–70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS (SEP 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232–81 Contract funding.

As prescribed in 1832.705–270(b), insert the following clause:

CONTRACT FUNDING (JUN 1990)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $. This allotment is for [Insert applicable item number(s), task(s), or work description] and covers the following estimated period of performance: .

(b) An additional amount of $ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 57 FR 40856, Sept. 8, 1992]

1852.232–82 Submission of requests for progress payments.

As prescribed in 1832.502–470, insert the following clause:

SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS (MAR 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233–70 Protests to NASA.

As prescribed in 1833.106–70, insert the following provision:

PROTESTS TO NASA (MAR 1997)

Potential bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Deputy Associate Administrator for Procurement, NASA Code H, Washington, DC 20546–0001.

[62 FR 11108, Mar. 11, 1997]

1852.235–70 Center for AeroSpace Information—final scientific and technical reports.

As prescribed in 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION—FINAL SCIENTIFIC AND TECHNICAL REPORTS (JULY 2000)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (http://www.sti.nasa.gov) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information, which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) In addition to the final report, as defined at 1827.406–70(a)(3), submitted to the contracting officer, a reproducible copy and a printed or reproduced copy of the final report or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, Maryland 21076–1320, Phone: 301–621–0390, FAX: 301–621–0134.

(d) The last page of the final report submitted to CASI shall be a completed Standard Form (SF) 298, Report Documentation Page. In addition to the copy of the final report, the contractor shall provide, to CASI, a copy of the letter transmitting the final report to NASA for its Document Availability Authorization (DAA) review.

(e) The contractor shall not release the final report, outside of NASA, until the DAA review has been completed by NASA and availability of the report has been determined.

(End of clause)

[65 FR 45307, July 21, 2000]

1852.235–71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided,* that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235–72 Instructions for responding to NASA Research Announcements.

As prescribed in 1835.070(c), insert the following provision:

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (JAN 2000)

(a) General.

(1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1).

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) NRA-Specific Items. Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) Transmittal Letter or Prefatory Material.

(i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) Restriction on Use and Disclosure of Proposal Information. Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

NOTICE—RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL INFORMATION

The information (data) contained in *[insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data0 if obtained from another source without restriction.

(3) Abstract. Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) Project Description.

(i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described.

(6) Personnel. The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) Facilities and Equipment.

(i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

(8) Proposed Costs (U.S. Proposals Only).

(i) Proposals should contain cost and technical parts in one volume: do not use separate ''confidential'' salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A–21 for educational

institutions and A–122 for nonprofit organizations).

(iv) Use of NASA funds—NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(9) Security. Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) Special Matters.

(i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) Renewal Proposals.

(1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) Length. Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15–20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of ''one-of-a-kind'' attachments.

(f) Joint Proposals.

(1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. ''Joint'' proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) Late Proposals. Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.

(h) Withdrawal. Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) Evaluation Factors

(1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) Evaluation Techniques. Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) Selection for Award.

(1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) Additional Guidelines Applicable to Foreign Proposals and Proposals Including Foreign Participation

(1) NASA welcomes proposals from outside the U.S. However, foreign entities are generally not eligible for funding from NASA. Therefore, unless otherwise noted in the NRA, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included. Proposals from foreign entities and proposals from U.S. entities that include foreign participation must be endorsed by the respective government agency or funding/sponsoring institution in the country from which the foreign entity is proposing. Such endorsement should indicate that the proposal merits careful consideration by NASA, and if the proposal is selected, sufficient funds will be made available to undertake the activity as proposed.

(2) All foreign proposals must be typewritten in English and comply with all other submission requirements stated in the NRA. All foreign proposals will undergo the same evaluation and selection process as those originating in the U.S. All proposals must be received before the established closing date. Those received after the closing date will be treated in accordance with paragraph (g) of this provision. Sponsoring foreign government agencies or funding institutions may, in exceptional situations, forward a proposal without endorsement if endorsement is not possible before the announced closing date. In such cases, the NASA sponsoring office should be advised when a decision on endorsement can be expected.

(3) Successful and unsuccessful foreign entities will be contacted directly by the NASA sponsoring office. Copies of these letters will be sent to the foreign sponsor. Should a foreign proposal or a U.S. proposal with foreign participation be selected, NASA's Office of External Relations will arrange with the foreign sponsor for the proposed participation on a no-exchange-of-funds basis, in which NASA and the non-U.S. sponsoring agency or funding institution will each bear the cost of discharging their respective responsibilities.

(4) Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(i) An exchange of letters between NASA and the foreign sponsor; or

(ii) A formal Agency-to-Agency Memorandum of Understanding (MOU).

(m) Cancellation of NRA. NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for canceling the NRA or for anyone's failure to receive actual notice of cancellation.

[62 FR 4475, Jan. 30, 1997, as amended at 64 FR 48561, Sept. 7, 1999; 65 FR 3153, Jan. 20, 2000]

1852.236–71 Additive or deductive items.

As prescribed in 1836.570(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of

$10,000, $8,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–72 Bids with unit prices.

As prescribed in 1836.570(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–73 Hurricane plan.

As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–74 Magnitude of requirement.

As prescribed in 1836.570(d), insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between $ and $. [Insert the estimated dollar range.]

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–75 Partnering for construction contracts.

As prescribed in 1836.7004, insert the following clause:

PARTNERING FOR CONSTRUCTION CONTRACTS (AUG 1998)

(a) The terms ''partnering'' and ''partnership'' used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design

contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[63 FR 44171, Aug. 18, 1998]

1852.237–70 Emergency evacuation procedures.

As prescribed at 1837.110–70(a), insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989; 62 FR 4476, Jan. 30, 1997]

1852.237–71 Pension portability.

As prescribed at 1837.110–70(b), insert the following clause:

PENSION PORTABILITY (JAN 1997)

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed $2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

[62 FR 4477, Jan. 30, 1997]

§ 1852.239–70 Alternate delivery points.

As prescribed in 1839.106–70(a)(1), insert the following clause:

ALTERNATE DELIVERY POINTS (NOV 1993)

(a) The first priority of this contract is to satisfy the anticipated requirements of (identify contracting activity). However, should the actual requirements of (contracting activity) be less than the maximum quantities/values specified in section B of this contract, (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List installations and their locations)

(b) The prices of the deliverables in section B are F.O.B. destination to (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

ALTERNATE I (NOV 1993)

As prescribed in 1839.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[58 FR 59189, Nov. 8, 1993; 58 FR 62556, Nov. 29, 1993, as amended at 62 FR 4477, Jan. 30, 1997; 62 FR 36735, July 9, 1997]

1852.241–70 Renewal of contract.

As prescribed in 48 CFR 1841.501–70, insert the following clause:

RENEWAL OF CONTRACT (DEC 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed years.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991. Redesignated and amended at 60 FR 16063, Mar. 29, 1995; 62 FR 4477, Jan. 30, 1997]

1852.242–70 Technical direction.

As prescribed in 1842.271, insert the following clause:

TECHNICAL DIRECTION (SEP 1993)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. ''Technical direction'' means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) Constitutes a basis for any increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) of this clause, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the requirements of the contract and does not constitute a change under the Changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the Contractor and the Contracting Officer to agree that the instruction or direction is both within the requirements of the contract and does not constitute a change under the Changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 32119, July 15, 1991; 59 FR 21668, Apr. 26, 1994; 62 FR 36735, July 9, 1997]

1852.242–71 Travel outside of the United States.

As prescribed in 1842.7002, insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 56 FR 12460, Mar. 26, 1991]

1852.242–72 Observance of legal holidays.

As prescribed in 1842.7001(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (AUG 1992)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King, Jr.'s Birthday
Columbus Day
President's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

ALTERNATE I (SEP 1989)

As prescribed in 1842.7001(b), add the following paragraphs (c) and (d) as Alternate I to the clause.

(c) On-site personnel assigned to this contract shall not be granted access to the installation during the holidays in paragraph (a) of the clause, except as follows: the Contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative. If the Contractor's on-site personnel work during a holiday other than those in paragraph (a) of the clause, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.

ALTERNATE II (SEP 1989)

As prescribed in 1842.7001(c), add the following as paragraphs (e) and (f) if Alternate I is used, or as paragraphs (c) and (d) if Alternate I is not used.

(e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient onsite personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of this clause, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

[54 FR 39376, Sept. 26, 1989, as amended at 57 FR 40856, Sept. 8, 1992; 62 FR 36735, July 9, 1997; 63 FR 32764, June 16, 1998]

1852.242–73 NASA contractor financial management reporting.

As prescribed in 1842.7202, insert the following clause:

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (JUL 2000)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Procedures and Guidelines (NPG) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 65 FR 46628, July 31, 2000]

1852.242–74 Notice of Earned Value Management System.

As prescribed in 1842.7402(a)(1), insert the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (MAR 1999)

(a) The offeror shall provide documentation that the cognizantAdministrative Contracting Officer (ACO) has recognized that:

(1) The proposed earned value management system (EVMS) complies with the EVMS criteria of NASA Policy Directive (NPD) 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) The company EVM system conforms with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the successful offeror shall submit a plan for compliance with the NASA EVM criteria as described in NPD 9501.3.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(iii) Describe the management system and its application in terms of the criteria;

(iv) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The Government will review the offeror's plan for EVMS before contract award. The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(c) Offerors shall identify in their proposals the major subcontractors, or major subcontracted efforts if major subcontractors have not been selected, planned for application of EVMS. The prime contractor and the Government shall agree to subcontractors selected for application of EVMS.

(End of Provision)

[64 FR 10574, Mar. 5, 1999]

1852.242–75 Earned Value Management Systems.

As prescribed at 1842.7402(a)(2), insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAR 1999)

(a) In the performance of this contract, the Contractor shall use:

(1) An earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) A company EVMS that the ACO has recognized as conforming with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO per paragraph (a) of this clause or the Contractor does not have an existing cost schedule control system (C/SCS) that has been accepted by the Government, the Contractor shall apply the Contractor's EVMS to the contract and be prepared to demonstrate to the ACO that its system complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, exercise of significant contract options, or incorporation of major contract modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation.

The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO and provide an information copy to the NASA Contracting Officer at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: (Insert list of applicable subcontractors)

(End of clause)

[64 FR 10575, Mar. 5, 1999]

1852.242–76 Modified Cost Performance Report.

As prescribed in 1842.7402(b), insert the following clause:

MODIFIED COST PERFORMANCE REPORT (MAR 1999)

(a) The Contractor shall use management procedures in the performance of this contract that provide for:

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the Modified Cost Performance Report (M/CPR).

(b) As a minimum, these procedures must provide for:

(1) Establishing the time-phase budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after consultation with the Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and a projected-at-completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as:

(1) Complying with the earned value management system criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) Conforming with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, exercise of significant contract options, or incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to:

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the M/CPR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the M/CPR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish M/CPR in each case where the subcontract is other than firm-fixed-price, time-and-materials, or labor-hour; is 12 months or more in duration; and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's M/CPR.

(End of clause)

[64 FR 10575, Mar. 5, 1999]

1852.242–77 Modified Cost Performance Report Plans.

As prescribed in 1842.7402(c), insert the following provision;

MODIFIED COST PERFORMANCE PLANS (MAR 1999)

(a) The offeror shall submit in its proposal a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 1852.242–76, Modified Cost Performance Report.

(b) The offeror may propose to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as:

(1) Complying with the earned value management system criteria of NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) Conforming with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems. In such cases, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

[64 FR 10575, Mar. 5, 1999]

1852.243–70 Engineering change proposals.

As prescribed in 1843.205–70(a)(1), insert the following clause, modified to suit contract type:

ENGINEERING CHANGE PROPOSALS (FEB 1998)

(a) Definitions.

ECP means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

MIL-STD–973 means a DOD publication entitled, Military Standard Configuration Control—Egnineering Changes, Deviations and Waivers, 15 July 1988.

(b) Either party to the contract may originate ECPs. The originator shall forward proposed ECPs to the Contracting Officer. Unless another process has been approved by the Government or specified by the Contracting Officer, the ECP formats, forms and controls specified in MIL-STD–973 shall be used. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a ''not-to-exceed'' [price or estimated cost] increase or decrease adjustment amount, if any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the Contractor regarding the ''not-to-exceed'' [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) After submission of a Contractor initiated ECP, the Contracting Officer may require the Contractor to submit the following information:

(1) Cost or pricing data in accordance with FAR 15.403–5 if the proposed change meets the criteria for its submission under FAR 15.403–4; or

(2) Information other than cost or pricing data adequate for Contracting Officer determination of price reasonableness or cost realism. The Contracting Officer reserves the right to request additional information if that provided by the Contractor is considered inadequate for that purpose. If the Contractor claims applicability of one of the exceptions to submission of cost or pricing data, it shall cite the exception and provide rationale for its applicability.

(e) If the ECP is initiated by NASA, the Contracting Officer shall specify the cost information requirements, if any.

(End of clause)

ALTERNATE I (JUL 1997)

As prescribed in 1843.205–70(a)(2), add the following paragraph (f), modified to suit contract type, to the basic clause:

(f) If the [price or estimated cost] adjustment proposed for any contractor-originated ECP is [insert a percent or dollar amount of the contract price or estimated cost] or less, the ECP shall be executed with no adjustment to the contract [price or estimated cost].

ALTERNATE II (SEPT 1990)

As prescribed in 1843.205–70(a)(3), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

[62 FR 14033, Mar. 25, 1997, as amended at 62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997; 63 FR 9966, Feb. 27, 1998; 63 FR 11480, Mar. 9, 1998; 63 FR 17339, Apr. 9, 1998]

1852.243–71 Shared savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS (MAR 1997)

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential purpose of services to be provided under the contract.

(b) Definitions:

(1) *Cost savings,* as contemplated by this clause mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this provision, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this provision, Contractor implementation costs, or ''implementation costs'', shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this provision, the term Government costs means internal costs of NASA, or any other Government agency, which result directly from development and implementation of the CRP. These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the Cost Reduction Proposal.

(c) General. The Contractor will develop, prepare and submit CRP's with supporting information as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor

shall share in any net cost savings realized from approved and implemented CRPs in accordance with the terms of this clause. The Contractor's actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact performance on its contract, including Government and other Contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) Computation of cost savings. The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) Supporting Information. As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract, the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submittals.

(f) Administration.

(1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRP's should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the Contractor may, upon concurrence of the Contracting Officers responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's

share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings, and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in advance of the intended action and affording the Contractor an opportunity for discussion.

(g) Limitations. Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

[62 FR 14033, Mar. 25, 1997]

1852.243–72 Equitable adjustments.

As prescribed in 1843.205–70(b), insert the following clause.

EQUITABLE ADJUSTMENTS APR 1998

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the ''Suspension of Work'' clause (FAR 52.242–14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. ''Commission'' is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces	-----	-----	10
To first tier subcontractor on work performed by its subcontractors	-----	-----	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	-----

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

[63 FR 17339, Apr. 9, 1998]

1852.244–70 Geographic participation in the aerospace program.

As prescribed in 1844.204–70, insert the following clause:

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14034, Mar. 25, 1997]

1852.245–70 Contractor requests for Government-owned equipment.

As prescribed in 1845.106–70(a), insert the following clause:

CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT (JUL 1997)

(a) ''Equipment,'' as used in this clause, means commercially available items capable of stand-alone use, including those to be acquired for incorporation into special test equipment or special tooling.

(b)(1) Upon determination of need for any Government-owned equipment item for performance of this contract, the contractor shall provide to the contracting officer a written request justifying the need for the equipment and the reasons why contractor-owned property cannot be used, citing the applicable FAR or contract authority for use of Government-owned equipment. Equipment being acquired as a deliverable end item listed in the contract or as a component for incorporation into a deliverable end item listed in the contract is exempt from this requirement.

(2) The contractor's request shall include a description of the item in sufficient detail to enable the Government to screen its inventories for available equipment or to purchase equipment. For this purpose, the contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, or equivalent format, for each item requested and (ii) forward it through the contracting officer to the Industrial Property Officer at the cognizant NASA installation at least 30 days in advance of the date the contractor intends to acquire the item. Multiple units of identical items may be requested on a single form. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7102. If a certificate of nonavailability is not received within that period, the contractor may proceed to acquire the item, subject to having obtained contracting officer consent, if required, and having complied with any other applicable provisions of this contract.

(c) Contractors who are authorized to conduct their own screening using the NASA Equipment Management System (NEMS) and other Government sources of excess property shall provide the evidence of screening results with their request for contracting officer consent. Requests to purchase based on unsuitability of items found shall include rationale for the determined unsuitability.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245–71 Installation-accountable Government property.

As prescribed in 1845.106–70(b), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY(JUN 1998)

(a) The Government property described in the clause at 1852.245–77, List of Installation-Accountable Property and Services, shall be made available to the contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property. Under this clause, the Government retains accountability for, and title to, the property, and the contractor assumes the following user responsibilities: [Insert contractor user responsibilities].

The contractor shall establish and adhere to a system of written procedures for compliance with these user responsibilities. Such procedures must include holding employees liable, when appropriate, for loss, damage, or destruction of Government property.

(b)(1) The official accountable recordkeeping, physical inventory, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area;

(ii) The contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area;

(iii) The contractor shall establish a record of the property as required by FAR 45.5 and 1845.5 and furnish to the Industrial Property Officer a DD Form 1149 Requisition and Invoice/Shipping Document (or installation equivalent) to transfer accountability to the Government within 5 working days after receipt of the property by the contractor. The contractor is accountable for all contractor-acquired property until the property is transferred to the Government's accountability.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use require advance approval of the contracting officer and notification of the SEMO. The contractor shall assume accountability and financial reporting responsibility for such property. The contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR Part 45.5 until its return to the installation.

(2) After transfer of accountability to the Government, the contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the contracting officer.

(End of clause)

ALTERNATE I

(March 1989)

As prescribed in 1845.106–70(b)(2), insert the following as subparagraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 63 FR 32764, June 16, 1998]

1852.245–72 Liability for Government property furnished for repair or other services.

As prescribed in 1845.106–70(c), insert the following clause:

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (MAR 1989)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as ''Government property furnished for servicing,'' shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing: (1) Caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing,

adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245–73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.106–70(d), insert the following clause:

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (SEPT 2000)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with the provisions of 1845.505–14, the instructions on the form, subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the Center Deputy Chief Financial Officer, Finance.

(3) Three copies shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by NASA. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with (b)(1) through (3) of this clause.

(End of clause)

[65 FR 54816, Sept. 11, 2000]

1852.245–74 Contractor accountable on-site Government property.

As prescribed in 1845.106–70(e), insert the following clause:

CONTRACTOR ACCOUNTABLE ON-SITE GOVERNMENT PROPERTY (MAR 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

(1) Use economic order quantity (EOQ) methods for routine stock replenishment;

(2) Utilize the Federal Cataloging System;

(3) Comply with shelf-life requirements;

(4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing $1000 and over, plus that equipment designated as ''sensitive'';

(5) Provide for physical inventory of all controlled equipment at least every 3 years;

(6) Provide for sample inventories of materials plus complete inventories every 5 years;

(7) Conduct walk-through utilization inspections;

(8) Screen NEMS before acquiring any equipment costing $1000 or over, plus equipment designated by the installation as sensitive and costing $500 and over;

(9) Support the Equipment Acquisition Document (EAD) process; and

(10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) of this clause are specified under section F, Deliveries or performance.

(End of clause)

1852.245–75 Title to equipment.

As prescribed in 1845.106–70(f), insert the following clause:

TITLE TO EQUIPMENT (MAR 1989)

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research under this contract and having an acquisition cost less than $ [Insert a dollar value not less than $5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of $ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606–5.

(c) Title to the property specified in paragraph (b) of this clause vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) of this clause to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert ''None''].

(End of clause)

1852.245–76 List of Government-furnished property.

As prescribed in 1845.106–70(g), insert the following clause:

LIST OF GOVERNMENT-FURNISHED PROPERTY (OCT 1988)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment [Insert attachment number or ''not applicable''] of this contract on a no-charge-for-use basis. The Contractor shall use this property in the performance of this contract at [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under the FAR 52.245 Government property clause of this contract, the Contractor is accountable for the identified property.

Item	Quantity	Acquisition cost	Date to be furnished to the contractor
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....

[Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the Contractor]

(End of clause)

1852.245–77 List of installation-accountable property and services.

As prescribed in 1845.106–70(h), insert the following clause:

LIST OF INSTALLATION-ACCOUNTABLE PROPERTY AND SERVICES (JUL 1997)

In accordance with the clause at 1852.245–71, Installation-Accountable Government Property, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, in the performance of this contract within the

physical borders of the installation which may include buildings and space owned or directly leased by NASA in close proximity to the installation, if so designated by the Contracting Officer.

(a) Office space, work area space, and utilities. Government telephones are available for official purposes only; pay telephones are available for contractor employees for unofficial calls.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available is listed in Attachment [Insert attachment number or ''not applicable'' if no equipment is provided]. The Government retains accountability for this property under the clause at 1852.245–71, Installation-Accountable Government Property, regardless of its authorized location.

(2) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records as required by the clause at 1852.245–71, Installation-Accountable Government Property.

(3) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: [Insert the name of the facilities or ''None'']

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The user responsibilities of the Contractor are defined in paragraph (a) of the clause at 1852.245–71, Installation-Accountable Government Property.

(End of clause)

[62 FR 36736, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245–79 Use of Government-owned property.

As prescribed in 1845.106–70(i), insert the following provision:

USE OF GOVERNMENT-OWNED PROPERTY (JUL 1997)

(a) The offeror ( ) does, ( ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), and NASA FAR Supplement (NFS) 1845.102–71:

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245–9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

(b) The offeror ( ) does, ( ) does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement of its inability to obtain facilities as prescribed by FAR 45.302–1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) of this provision), the offer must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting

procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5 and 1845.71.

(3) A statement indicating whether or not the costs associated with paragraph (c)(2) of this provision, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

[62 FR 36736, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 63 FR 32764, June 16, 1998]

1852.245–80 Use of Government production and research property on a no-charge basis.

As prescribed in 1845.106–70(k), insert the following clause:

USE OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY ON A NO-CHARGE BASIS (MAR 1989)

In performing this contract, the Contractor is authorized to use on a no-charge, noninterference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

(End of clause)

1852.246–70 Mission Critical Space System Personnel Reliability Program.

As prescribed in 1846.370(a), insert the following clause:

MISSION CRITICAL SPACE SYSTEM

PERSONNEL RELIABILITY PROGRAM (MAR 1997)

(a) In implementation of the Mission Critical Space System Personnel Reliability Program, described in 14 CFR 1214.5, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2) to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be suitable, competent, and reliable in the performance of their assigned duties in accordance with the screening requirements 14 CFR 1214.5. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

[62 FR 14034, Mar. 25, 1997]

1852.246–71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Function	Location

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990; 62 FR 14035, Mar. 25, 1997]

1852.246–72 Material inspection and receiving report.

As prescribed in 1846.674, insert the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (JUN 1995)

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in [Insert number of copies, including original] copies, an original and copies [Insert number of copies].

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.672–1. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words ''CONTAINS DD FORM 250'' on the package.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 60 FR 40521, Aug. 9, 1995; 62 FR 14035, Mar. 25, 1997]

1852.246–73 Human space flight item.

As prescribed in 1845.370(b), insert the following clause:

HUMAN SPACE FLIGHT ITEM (MAR 1997)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

''FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER.''

(End of clause)

[62 FR 14035, Mar. 25, 1997]

1852.247–71 Protection of the Florida manatee.

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (MAR 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867–5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM–TNG, telephone (407) 867–2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

1852.247–72 Advance notice of shipment.

As prescribed in 1847.305–70(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

[Insert number of work days] work days prior to shipping item(s) [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.247–73 Shipment by Government bills of lading.

As prescribed in 1847.305–70(b), insert the following clause:

SHIPMENT BY GOVERNMENT BILLS OF LADING (MAR 1997)

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from: [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(1) Item identification/description.
(2) Origin and destination.
(3) Individual and total weights.
(4) Dimensions and total cubic footage.
(5) Total number of pieces.
(6) Total dollar value.
(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a certificate as described below must be completed, signed by an authorized company representative, and attached to the invoice.

I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number:
Destination:

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.249–72 Termination (utilities).

As prescribed in 1849.505–70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

TERMINATION (UTILITIES) (MAR 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

[57 FR 40856, Sept. 8, 1992]

1852.301 Solicitation provisions and contract clauses (Matrix).

PART 1853—FORMS

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1853.242 Contract administration.
1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).
1853.242–71 Notifications (NASA Form 456).
1853.242–72 Evaluation of performance (NASA Form 1680).
1853.245–70 Property (NASA Form 1018, Department of Defense Form 1419).
1853.246 Quality assurance (Department of Defense Forms 250 and 250c).
1853.249–70 Termination of contracts (NASA Forms 1412, 1413).
1853.271 MidRange procurement procedures (NASA Forms 1667 and 1668).

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.
1853.301 Standard forms.
1853.303 Agency forms.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36737, July 9, 1997, unless otherwise noted.

Subpart 1853.1—General

1853.100 Scope of subpart.

This subpart contains information regarding the forms prescribed in this Regulation. Unless specified otherwise, the policies in FAR Part 53 apply to NASA-prescribed forms.

1853.101 Requirements for use of forms.

The requirements for use of the forms in this part are contained in Parts 1801 through 1852 where the subject matter applicable to each form is addressed. The specific location of each form's prescription is identified in subpart 1853.2.

1853.103 Exceptions.

(1) Requests for exceptions to standard or optional forms shall be forwarded through the center forms manager to the Headquarters Office of Procurement (Code HK).

(2) Alteration of any form in this part is prohibited unless prior approval has been obtained from the Headquarters Office of Management Systems and Facilities, Information Resources Management Division (Code JT). Requests for alteration shall be coordinated with the center forms manager before transmittal to Code JT.

(3) Use for the same purpose of any form other than one prescribed by this Regulation requires prior approval of Code HK.

1853.105 Computer generation.

Forms prescribed by this Regulation may be adapted for computer preparation providing there is no change to the name, content, or sequence of the data elements, and the form carries the form number and edition date.

1853.107 Obtaining forms. (NASA supplements paragraph (c))

(c)(i) NASA centers and offices may obtain forms prescribed in the FAR or in this Regulation from Goddard Space Flight Center, Code 239. Orders should be placed on a NASA Form 2, Request for Blank Forms, Publications and Issuances.

(ii) Contracting officers, at the time of contract award, shall ensure that contractors are notified of the procedures for obtaining NASA forms required for performance under the contract.

1853.108 Recommendations concerning forms.

Code HK is the office responsible for submitting form recommendations.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.

This subpart summarizes the prescriptions of NASA forms and other forms adopted by NASA for use in acquisition.

1853.204 Administrative matters.

1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533Q, 1098, 1356, 1611, 1612 and Department of Defense Form 1593).

(a) The following forms are prescribed in 1804.670–3:

(1) NASA Form 507, Individual Procurement Action Report (New Awards).

(2) NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.

(3) NASA Form 507B, Individual Procurement Action Report Supplement B.

(4) NASA Form 507G, Individual Procurement Action Report (Grants/Orders).

(5) NASA Form 507M, Individual Procurement Action Report (Modifications).

(b) *NASA Form 531, Name Check Request.* Prescribed in 1852.204–76.

(c) The following forms are prescribed in 1842.72:

(1) NASA Form 533M, Monthly Contractor Financial Management Report.

(2) NASA Form 533Q, Quarterly Contractor Financial Management Report.

(d) *NASA Form 1098, Checklist for Contract Award File Content.* Prescribed in 1804.803–70.

(e) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* Prescribed in 1804.671.

(f) *NASA Form 1611, Contract Completion Statement.* Prescribed in 1804.804–2 and 1804.804–5.

(g) The following forms are prescribed in 1804.804–5:

(1) NASA Form 1612, Contract Closeout Checklist.

(2) DD Form 1593, Contract Administration Completion Record.

1853.208 Required sources of supplies and services.

1853.208–70 Other Government sources (Standard Form 1080, Air force Form 858, Department of Energy Form CA–10–90.COM, Nuclear Regulatory Commission Form 313).

(a) *SF 1080, Voucher for Transfers Between Appropriations and/or Funds (Disbursement).* Prescribed in 1808.002–72(e).

(b) *Air Force Form 858, Forecast of Requirements (Missile Propellants and Pressurants).* Prescribed in 1808.002–72(f).

(c) U.S. Department of Energy Isotope and Technical Service Order Form CA–10–90.COM. Prescribed in 1808.002–70(a).

(d) *Nuclear Regulatory Commission Form 313, Application for Material License.* Prescribed in 1808.002–70(a).

[62 FR 36737, July 9, 1997, as amended at 64 FR 5621, Feb. 4, 1999]

1853.215 Contracting by negotiation.

1853.215–70 Price negotiation (NASA Form 634 and Department of Defense Form 1861).

(a) *NASA Form 634, Structured Approach—Profit/Fee Objective.* Prescribed in 1815.404–470.

(b) *DD Form 1861, Contract Facilities Capital Cost of Money.* Prescribed in 1830.70, and instructions for completion are in 1830.7001–2.

[62 FR 36737, July 9, 1997. Redesignated and amended at 63 FR 9966, Feb. 27, 1998]

1853.216 Types of contracts.

1853.216–70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, and 781).

The following forms are prescribed in 1852.216–89:

(a) NASA Form 778, Contractor's Release.

(b) NASA Form 779, Assignee's Release.

(c) NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

(d) NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

1853.217 Special contracting methods (NASA Forms 523).

NASA Form 523, NASA-Defense Purchase Request. Prescribed in 1808.002–72(b) and 1817.7002.

1853.225 Foreign Acquisition (Customs Form 7501).

Customs Form 7501, Entry Summary. Prescribed in 1825.903 and 14 CFR 1217.104.

[65 FR 10033, Feb. 25, 2000]

1853.232–70 Contract financing (Standard Forms 272, 272A).

The following forms are prescribed in 1832.412(a)(ii):

(a) SF 272, Federal Cash Transactions Report.

(b) SF 272A, Federal Cash Transactions Report Continuation.

[62 FR 36737, July 9, 1997. Redesignated at 63 FR 9966, Feb. 27, 1998]

1853.242 Contract administration.

1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* Prescribed in 1842.202(d)(ii).

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* Prescribed in 1842.202(d)(ii).

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* Prescribed in 1842.202(d)(iii).

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* Prescribed in 1842.202(b)(1)(G).

(e) *NASA Form 1433, Letter of Audit Delegation.* Prescribed in 1842.202(d)(iv).

(f) *NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation.* Prescribed in 1842.270(b).

(g) *NASA Form 1434, Letter of Request for Pricing-Audit Technical Evaluation Services.* Prescribed in 1815.404–2(a)(1)(D).

[62 FR 36737, July 9, 1997, as amended at 63 FR 9967, Feb. 27, 1998]

1853.242–71 Notifications (NASA Form 456).

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Prescribed in 1842.803(b)(2).

1853.242–72 Evaluation of Performance (NASA Form 1680).

NASA Form 1680, Evaluation of Performance. Prescribed in 1842.1503.

[63 FR 27860, May 21, 1998]

1853.245–70 Property (NASA Form 1018, Department of Defense Form 1419).

(a) *NASA Form 1018, NASA Property in the Custody of Contractors.* Prescribed in 1845.505–14. Instructions for form completion are in 1845.7101.

(b) DD Form 1419, DOD Industrial Plant Equipment Requisition. Prescribed in 1852.245–70. Instructions for form completion are in 1845.7102.

[62 FR 36737, July 9, 1997. Redesignated at 63 FR 9966, Feb. 27, 1998]

1853.246 Quality assurance (Department of Defense Forms 250 and 250c).

The following forms are prescribed in 1846.670. Instructions for form completion are in 1846.670:

(a) DD Form 250, Material Inspection and Receiving Report

(b) DD Form 250c, Material Inspection and Receiving Report-Continuation Sheet.

1853.249–70 Termination of contracts (NASA Forms 1412, 1413).

(a) *NASA Form 1412, Termination Authority.* Prescribed in 1849.101–71.

(b) *NASA Form 1413, Termination Docket Checklist.* Prescribed in 1849.105–70.

[62 FR 36737, July 9, 1997. Redesignated at 63 FR 9966, Feb. 27, 1998]

1853.271 MidRange procurement procedures (NASA Forms 1667 and 1668).

The following forms are prescribed in 1871.105(f):

(a) NASA Form 1667, Request for Offer.

(b) NASA Form 1668, Contract.

[64 FR 19926, Apr. 23, 1999]

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.

This subpart contains illustrations of NASA forms and others forms used by NASA in acquisitions and not prescribed in the FAR.

1853.301 Standard forms.

This section illustrates standard forms (SFs) specified for use in acquisitions.

1853.303 Agency forms.

This section illustrates NASA and other agency forms specified for use in acquisitions. The other agency forms are arranged numerically by agency following the NASA forms.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

1871.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, including commercial items, and services.

Subpart 1871.1—General

SOURCE: 64 FR 19926, Apr. 23, 1999, unless otherwise noted.

1871.101 Purpose.

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process.

1871.102 Applicability.

(a) This part applies to all acquisitions at NASA, except as provided in 1871.401–4(a)(3), the aggregate amount of which is not more than $10,000,000 including options, and for commercial items (FAR Part 12) not more than $25,000,000 including options. This part may be used for commercial item contracts above $25,000,000 at the installation's discretion.

(b) For other than commercial items, if the Government estimate exceeds the limits of paragraph (a) of this section, the acquisition will be processed under FAR and NFS procedures applicable to large acquisitions (see FAR Parts 14 and 15). When the estimate is within the threshold of paragraph (a) of this section and the acquisition was started using these procedures but the offered prices/costs exceed the MidRange ceiling, the acquisition may continue under MidRange procedures, provided that—

(1) The price/cost can be determined to be fair and reasonable;

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large acquisitions; and

(3) The acquisition does not exceed $15,000,000 for the total requirement.

1871.103 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) MidRange procurement procedure means a set of procedures contained in this part and within the applicability of 1871.102.

(b) Request for Offer (RFO) means the solicitation used to request offers for all authorized MidRange procurements.

(c) Clarification and Discussion are used as defined in FAR 15.306.

(d) Commercial item is used as defined in FAR 2.101.

1871.104 Policy.

(a) Unless stated otherwise, acquisitions conducted using MidRange procedures shall comply with all applicable parts of the FAR and NFS (e.g. FAR 15.4 and 1815.4—Contract Pricing, and FAR 19.7 and 1819.7—The Small Business Subcontracting Program).

(b) Acquisitions conducted under Part 1871, unless otherwise properly restricted under the provisions of FAR Part 6, are considered to be full and open competition after exclusion of sources when set aside for competitions among small business concerns (FAR 6.203), 8(a) concerns (FAR 6.204), or HUBZone small businesses (FAR 6.205).

(c) Options may be included in the acquisition provided they conform to 1871.102(a).

(d) The appropriate part 1871 post-selection processes (negotiation, award, and publication of award) may be used to the extent applicable for Small Business Innovation Research (SBIR), broad agency announcements, unsolicited proposals, and Small Business Administration 8(a) acquisitions within the applicability of 1871.102(a).

(e) The NASA Acquisition Internet Service (NAIS) will be used to the maximum extent practicable to disseminate advance acquisition information and conduct part 1871 acquisitions.

(f) Use of locally generated forms is encouraged where their use will contribute to the efficiency and economy of the process. NASA Forms 1667, Request for Offer, and 1668, Contract, or computer generated versions of these forms, may be used as the solicitation and contract cover sheets, respectively, except that the SF1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used for construction acquisitions and the SF1449, Solicitation/Contract/Order for Commercial Items, shall be used for commercial item acquisitions. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.204).

Subpart 1871.2—Planning and Requirements Process

1871.201 Use of buying team.

MidRange procedures are based on the use of a buying team to conduct the procurement. The concept is to designate individuals who are competent in their respective functional areas, provide those individuals with the basic authority to conduct the procurement and hold them accountable for the results. The buying team will normally consist of one technical member and one procurement member, but may be augmented with additional members as necessary, Personnel providing normal functional assistance to the team (e.g., legal, financial) will not be considered a part of the team unless so designated. To function properly, the team should be given the maximum decision authority in matters related to the procurement. When higher level management approvals remain essential, it will be incumbent upon the functional team member to obtain such approvals.

1871.202 Organizatonal responsibilities.

1871.202–1 Requiring organization.

The requirements organization shall appoint, by name, the technical member of the buying team. This individual will normally be an end user or the one most familiar with the technical aspects of the requirement. The individual appointed, whatever the relationship with the procured item, is expected to totally fulfill the responsibilities to the buying team.

1871.202–2 Procurement organization.

The procurement organization shall appoint the procurement member of the buying team. This individual shall be a warranted contracting officer or a contract specialist with broad latitude to act for the contracting officer. The procurement member shall be the team leader with the ultimate responsibility to conduct the procurement.

1871.202–3 Supporting organizations.

Buying team members may require additional team members to perform specialized functions or to assist in the evaluation of offers. Requests for supporting members shall be made by the organization identifying the need for the support and directed to the appropriate management level in the supporting organization. Supporting team members, once designated for the team, shall fulfill all applicable responsibilities to the team as other members.

1871.202–4 Center management.

Center managers shall, to the maximum extent practical and consistent with their responsibilities to manage the Center mission, convey sufficient authority to members of the buying team to conduct the procurement. Administrative or technical approvals should be minimized, and where deemed essential, facilitated to the maximum extent practicable. Center managers should lend their full support to the buying team should problems arise from the procurement.

1871.203 Buying team responsibilities.

(a) The buying team shall conduct the procurement in a manner that best satisfies the user requirements and meets the norms expected of a Government procurement. Team members should develop open communications, rely on decisions of other responsible functional team members and meet their obligations to the team. The team will typically—

(1) Refine the final specifications for the solicitation;

(2) Decide the most appropriate solicitation method;

(3) Establish milestones for the procurement;

(4) Finalize the evaluation criteria;

(5) Develop the RFO and model contract; and

(6) Evaluate offers and determine the awardee.

(b) The procurement member of the buying team shall lead clarifications, discussions, and negotiations; shall be the source selection official; and shall conduct debriefings.

1871.204 Small business set-asides.

(a) Except as provided in paragraphs (b) through (f) of this section, each MidRange acquisition shall be reserved exclusively for small business concerns. (See FAR subparts 19.5 and 19.13. See FAR 19.1305(a) regarding priority considerations).

(b) The requirement for small business MidRange set-asides does not relieve the buying office of its responsibility to procure from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and multiple award Federal Supply Schedule contracts.

(c) Procurements not conducted as small business set-asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR Part 6.

(d) If the buying team procurement member determines that the conditions for a HUBZone set-aside, HUBZone sole source, or small business set-aside cannot be satisfied, the buying team may purchase on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document the contract file with the reason for the unrestricted acquisition.

(e) Acquisitions required to be conducted under Full and Open Competition by the Small Business Competitiveness Demonstration Program, FAR subpart 19.10, will not be set aside for small business.

(f) If the buying team proceeds with a small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer

from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the acquisition on an unrestricted basis utilizing MidRange procedures. If the acquisition is a HUBZone set-aside and only one acceptable offer is received, the buying team should proceed with the award in accordance with FAR 19.1305(d). The buying team procurement members shall document in the file the reason for the unrestricted purchase.

(g) Each model contract under a small business MidRange set-aside shall contain the clause at FAR 52.219–6, Notice of Total Small Business Set-Aside.

(h) Each model contract under a HUBZone MidRange set-aside shall contain the clause at FAR 52.219–3, Notice of Total HUBZone Set-Aside.

[63 FR 71604, Dec. 29, 1998, as amended at 64 FR 19927, Apr. 23, 1999]

Subpart 1871.4—Request for Offer (RFO)

1871.400 General.

In MidRange procedures, solicitation of sources shall be accomplished by use of an RFO. The RFO will be solely a solicitation document incorporating only those elements of information required to solicit the offer. Offers will be provided on a model contract furnished with the RFO.

1871.401 Types of RFO'S.

The RFO may be used for all types of procurements to which MidRange is applicable. The distinguishing difference will be the evaluation and award criteria specified in the RFO. This, in turn, will be driven by the buying team's decisions on the extent of discussion required, the amount of nonprice factors that will influence the award and the amount of competition available. If the conditions in FAR 6.401(a) are met, the RFO's described in 1871.401–1 and 1871.401–2 shall be used; otherwise, RFO's described in 1871.401–3, 1871.401–4, 1871.401–5, or 1871.401–6 may be used. Once the evaluation and award criteria have been specified in the RFO, the procurement must conform to the procedures applicable to these criteria, unless changed by formal amendment to the RFO.

1871.401–1 Sealed offers.

(a) Policy. RFO's may specify that award will be made to the low, responsive, responsible offeror providing the most advantageous offer considering only price and price-related factors. This method shall be used when (1) time permits the solicitation, submission, and evaluation of sealed offers; (2) award will be made on the basis of price and other price-related factors; (3) conducting discussions with the offerors is not necessary; and (4) a reasonable expectation of receiving more than one offer exists. The RFO shall be in compliance with the requirements of FAR part 14 relating to Sealed Bidding.

(b) Procedures. (1) The RFO shall request offerors to provide a complete offer by the closing date specified.

(2) In accordance with FAR part 14, offers (whether received by facsimile or sealed envelope delivery) shall be publicly opened at the designated time and place. Interested members of the public will be permitted to attend the opening. Offers shall be abstracted pursuant to FAR part 14 and be available for public inspection. The abstract shall be included in the contract file.

(3) All offers shall be examined for mistakes in accordance with FAR 14.407–1 and 14.407–2. The buying team shall determine that a prospective contractor is responsible and that the prices offered are reasonable (see FAR 14.408–2).

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for small disadvantaged business (SDB) concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19927, Apr. 23, 1999]

1871.401–2 Two-step competitive acquisition.

(a) Policy. (1) RFO's may specify that evaluation and award may be conducted in two distinct steps, similar in concept to ''Two Step Sealed Bidding.'' The MidRange Two Step process should be used when it is desirable to award to the lowest, responsive, responsible offeror after determining that the initial technical offer, or the revised technical offer, is acceptable.

(2) The procedures of FAR 14.503–2(a) shall be used once Step Two of this process begins.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified. Price offers are requested to ensure that they are accomplished in a timely manner and to reduce the time required for Step Two.

(2) Step One. The technical offer will be evaluated to determine if the product or service offered is acceptable. The buying team may proceed directly to Step Two if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional offers acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the buying team procurement member shall enter into discussions and request offeror(s) whose offer(s) is susceptible to being made acceptable to submit additional clarifying or supplementing information to make it acceptable (see FAR 14.503–1). It is expected that these discussions will be conducted on an informal basis. After completion of discussions, the buying team shall proceed to Step Two.

(3) Step Two. If discussions were held, the buying team shall afford all offerors who have submitted acceptable offers and those offers with whom discussions were conducted, an opportunity, by a common date, to revise their price offers. No changes to technical offers will be permitted during this process. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each offeror. The procedures at 1871.401–1(b) (2) and (3) shall then be followed.

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19927, Apr. 23, 1999]

1871.401–3 Competitive negotiated acquisition not using qualitative criteria.

(a) Policy. (1) RFO's may provide for discussion of all aspects of the offer but award is based on the technically acceptable offer having the lowest price (if fixed price) or the lowest most probable cost (if cost reimbursable). This method should be used when qualitative factors are not material in the award decision, but it is important to assure that technical offers and contract terms are fully compliant with the Government's needs. This method also permits direct discussion of price with offerors and is particularly appropriate when different approaches can be offered to satisfy the Government's need.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215–1, will be included in all RFO's for competitive negotiated procurements not using qualitative criteria except for solicitations for commercial item acquisitions.

(3) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

(4) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified.

(2) *Initial evaluation.* The buying team shall review each offer to determine if all required information has been provided. No further evaluation shall be made of any offer that is deemed unacceptable because it does not meet the technical requirements of the RFO and is not reasonably susceptible to being made so. Offerors may be contacted for clarification purposes only during the initial evaluation. Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefore and excluded from further consideration. Documentation for such rejection should consist of one or more succinct statements of fact that show the offer is not acceptable. No documentation is required if all offers are deemed to be acceptable or reasonably susceptible to being made so.

(3) *Determination of finalists.* From among the acceptable offers and those susceptible to being made acceptable, the buying team shall rank the offers based on price (or most probable cost) and exclude any whose price/most probable cost precludes any reasonable chance of being selected for final award. The remaining offers constitute the ''finalists'' for the contract. Only in exceptional cases will this number be less than two offers. The procurement buying team member shall succinctly record the basis for the decision.

(4) *Discussions.* The procurement buying team member shall lead discussions with each finalist. The discussions are intended to assist the buying team in fully understanding each finalist's offer and to assure that all finalists are competing equally on the basis intended. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.306. It is expected that discussions will be conducted on an informal basis with each finalist. After completion of discussions, each finalist shall be afforded an opportunity to revise its offer to support and clarify its offer. A reasonable amount of time (Normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each finalist. Such discussions are not required if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition, would not be in the Government's interest.

(5) *Selection.* The procurement team member shall be the source selection official. The source selection official may elect to make selection in lieu of determining finalists provided that it can be demonstrated that (i) selection of an initial offer(s) will result in the lowest price/cost to the Government and (ii) discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to evaluated price/cost. It is expected that the source selection statement will not ordinarily exceed one page and that the basis for the decision will be apparent upon review of the informal worksheets used in the evaluation process. These informal worksheets shall be included in the contract file.

(6) The names of offerors determined to be finalists or the name of the offeror selected for contract award will be electronically transmitted to all offerors. This will serve as notification to those offers that were not selected for further evaluation (see 1871.505).

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9966, 9967, Feb. 27, 1998; 64 FR 19927, Apr. 23, 1999]

1871.401–4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) Policy. (1) MidRange procurements shall normally use the BVS source selection method, prescribed in part 1871, subpart 1871.6, when it is desirable to base evaluation and award on a combination of price and non-price qualitative criteria.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215–1, will be included in all RFO's for competitive negotiated procurements using qualitative criteria except for solicitations for commercial item acquisitions.

(3) In exceptionally complex procurements, a source selection method other than MidRange Best Value Selection may be more appropriate. This may be appropriate in cases in which the following factors cannot be accommodated within the MidRange/BVS selection methodology:

(i) The ability to predefine the value characteristics that will constitute the discriminators among the offers;

(ii) The complexity of the interrelationships that must be evaluated;

(iii) The number of evaluators required to address the disciplines that will be involved in the offers; or

(iv) The impact that the procurement may have on higher level mission management (level of selection official) or future procurements.

(4) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns. SDB concerns that choose the FAR 19.11 price evaluation adjustment shall receive no consideration under a MidRange BVS value characteristic that addresses the FAR 19.1202 SDB participation evaluation;

(ii) FAR 19.1202 regarding the evaluation of the participation of SDB concerns in performance of the contract. For BVS MidRange acquisitions, SDB participation shall be evaluated as a BVS value characteristic (see 1871.603(b)); and

(iii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

(b) Procedures. (1) The buying team will determine which of the source selection methodologies is most appropriate to the specific procurement.

(2) The team shall record its rationale for selecting a methodology rather than BVS. Once this decision is made, the team shall no longer function as a MidRange buying team, but shall follow the instructions prescribed in the local procedures for the source selection method.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9966, 9967, Feb. 27, 1998; 64 FR 19928, Apr. 23, 1999]

1871.401–5 Noncompetitive negotiations.

(a) Policy. (1) The RFO may be used as the solicitation method for noncompetitive procurements.

(2) MidRange procedures may be used in noncompetitive acquisitions to the extent they are applicable.

(b) Procedures.

(1) The buying team shall request pricing information in accordance with FAR 15.402 and 15.403.

(2) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19928, Apr. 23, 1999]

1871.401–6 Commercial items.

(a) Policy. (1) MidRange procedures are considered consistent with the requirements of FAR part 12, Acquisition of Commercial Items. In the event of a conflict, however, FAR part 12 takes precedence.

(2) MidRange procedures may also be used, to the extent applicable, for commercial item acquisitions accomplished under FAR subpart 13.5, Text Program for Certain Commercial Items.

(3) Contract type shall be in accordance with FAR 12.207.

(b) Procedures. The offices will be evaluated in accordance with applicable procedures, and shall include consideration of technical, past performance, and price.

[61 FR 55758, Oct. 29, 1996, as amended at 62 FR 4477, Jan. 30, 1997; 63 FR 71604, Dec. 29, 1998]

1871.402 Preparation of the RFO.

(a) The RFO shall provide all standard information required for the offeror to submit an offer.

(b) The RFO shall contain space for all necessary additional instructions to offerors. As a minimum, the RFO shall contain the following:

(1) Incorporation by reference of all required standard provisions.

(2) A provision notifying offerors that standard Representations and Certifications will be required.

(3) Evaluation and award criteria.

(4) A provision requiring offerors to submit offers on an attached model contract.

(c) Requirements for the content and format of the offer should be the minimum required to provide for proper evaluation. Offerors' formats should be allowed to the maximum extent possible.

(d) Facsimile offers, defined by FAR 14.202–7 and FAR 15.203(d), are authorized for MidRange procurements.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9967, Feb. 27, 1998]

1871.404 Protection of offers.

A facsimile machine(s) shall be dedicated for receipt of offers and placed in a secure location where offers received on it can be safeguarded. All offers submitted shall be recorded, sealed in an envelope marked with the RFO number and taken to the buying team procurement member. Facsimile attendants shall make a good faith effort to inspect the document for completeness and legibility. If the attendant believes there are missing or illegible pages, the document will be promptly referred to the buying team procurement member for notification to the offeror that it should resubmit the offer. The Government shall not assume responsibility for proper transmission.

Subpart 1871.5—Award

1871.501 Representations and certifications.

Upon determination of the successful offeror, the buying team procurement member will determine if the offeror has on file valid Representations and Certifications. If the offeror has not completed the required forms, or they have expired, the offeror will be requested to provide the forms promptly. Should the offeror refuse to provide the required Representations and Certifications or fail to meet a required condition, the buying team shall reject the offer and proceed to the next highest ranked offeror who is responsive and responsible.

1871.502 Determination of responsible contractor.

Contractor responsibility shall be determined in accordance with FAR part 9.

1871.503 Negotiation documentation.

The prenegotiation memorandum, if required, and the results of negotiation will be in abbreviated form and will be approved by the buying team.

1871.504 Award documents.

Contract award shall be accomplished by contracting officer execution of the contract document and providing a paper copy to the successful offeror. If facsimile documents were used in the evaluation process, the successful offeror may be required to execute original copies of the contract to facilitate legibility during the administration phase of the contract.

1871.505 Notifications to unsuccessful offerors.

For solicitations that were posted on the NAIS, a preaward notice shall be electronically transmitted to the offerors. In addition, contracting officers shall comply with the preaward notices for small business programs in FAR 15.503(a)(2).

[64 FR 19928, Apr. 23, 1999]

1871.506 Publication of award.

An award notice shall be posted on the NAIS for 7 calendar days after posting, if the contract offers subcontracting opportunities or if it is subject to the Trade Agreements Act. The information required by FAR 5.207 shall be included in the award notice in abbreviated form.

1871.507 Debriefing of unsuccessful offerors.

The procurement buying team member shall conduct debriefings if requested.

Subpart 1871.6—"Best Value Selection"

1871.601 General.

(a) Best Value Selection (BVS) seeks to select an offer based on the best combination of price and qualitative merit of the offers submitted and reduce the administrative burden on the offerors and the Government.

(b) BVS takes advantage of the lower complexity of MidRange procurements and predefines the value characteristics which will serve as the discriminators among offers. It eliminates the use of area evaluation factors and the highly structured scoring.

1871.602 Specifications for MidRange procurements.

BVS refines the traditional approach to preparing specifications. BVS envisions that the requirement will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's needs by a separate set of value characteristics which establish what the Government considers to be valuable in an offer beyond the baseline requirement. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

[64 FR 36606, July 7, 1999]

1871.603 Establishment of evaluation criteria.

(a) The requiring organization will provide, along with the requirement, a list of value characteristics against which the offers will be judged. There is no limit to the number or the type of characteristics that may be specified. The only standard will be whether the characteristic is rationally related to the need specified in the specification. Characteristics may include such factors as improved reliability, innovativeness of ideas, speed of service, demonstrated delivery performance, higher speeds, ease of use, qualifications of personnel, solutions to operating problems, level of service provided on previous similar contracts, or any of numerous other characteristics that may be of value to the Government in satisfying its needs.

(b) For unrestricted acquisitions, small disadvantaged business (SDB) participation shall be evaluated as a BVS value characteristic (see FAR 19.1202–3). In order to receive consideration under the value characteristic, the offeror must propose a target for SDB participation greater than the baseline requirement. The baseline requirement for SDB participation is zero or no SDB participation. SDB concerns that choose the price evaluation adjustment under FAR 19.11 shall receive no consideration under this MidRange BVS value characteristic. Like other value characteristics, offerors meeting the baseline, but proposing no value above the baseline, and which are otherwise acceptable, are to be considered for award if they are finalists.

(c) Past performance may be included as a value characteristic or considered as a separate evaluation criteria. If considered as a separate criterion, the relative importance of past performance in relation to cost and technical must be defined in the solicitation.

(d) Cost and technical will be considered equal in importance. The value characteristics will not be assigned weights.

(e) All subsequent evaluations will consider these characteristics when determining the finalists or making the final selection for award.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19928, Apr. 23, 1999]

1871.604 Evaluation phases.

1871.604–1 Initial evaluation.

(a) Offers will be reviewed to determine if all required information has been provided and the offeror has made a reasonable attempt to present an acceptable offer. Offerors may be contacted only for clarification purposes during the initial evaluation. No further evaluation shall be made of any offer that is deemed unacceptable because:

(1) It does not represent a reasonable effort to address itself to the essential requirements of the RFO or clearly demonstrates that the offeror does not

understand the requirements of the RFO;

(2) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure; or

(3) In R&D procurement, a substantial design drawback is evident in the offer and sufficient correction or improvement to consider the offer acceptable would require virtually an entirely new offer.

(b) Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefor and excluded from further consideration.

(c) *Documentation.* If it is concluded that all offers are acceptable, then no documentation is required and evaluation proceeds. If one or more offers are not acceptable, the procurement member of the team will notify the offeror of the rejection and the reasons therefor. The documentation should consist of one or more succinct statements of fact that show the offer is not acceptable.

1871.604–2 Determination of "Finalists".

(a) All acceptable offers will be evaluated against the requirement and the value characteristics. Based on this evaluation, the team will identify the finalists from among the offers submitted. Finalists will include the most highly rated offerors in accordance with FAR 15.306(c)(1) and 1815.306(c)(2). Generally, finalists will include the offer having the best price (or lowest most probable cost) and the offer having the highest qualitative merit, plus those determined to have the best combination of price and merit. Offers not qualifying as finalists will be excluded from the balance of the evaluation process.

(b) The selection official may elect to make selection in lieu of determining finalists, provided it can be clearly demonstrated that

(1) Selection of an initial offer(s) will result in the best value for the Government, considering both price and nonprice qualitative criteria;

(2) Discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to the best value offer(s), and

(3) The solicitation contains a provision permitting award without discussions.

(c) *Documentation.* If finalists are identified as discussed in paragraph (a) of this section, the documentation expected and required to result from this phase of evaluation is approximately one-quarter of a page for each finalist. The documentation shall succinctly describe how the value characteristics in the RFO were provided by the offeror and cost/price considerations that caused the offer to qualify as a finalist. The evaluator(s) shall not be required to justify why other offers provided less qualitative merit. It is expected that, should the decision be challenged, the documented reason for selection, when compared with the non-selected offer, shall clearly demonstrate the difference that resulted in non-selection. It is expected and recommended that all informal worksheets used in the evaluation process be included in the contract file. When selection of the successful offeror(s) is made, the buying team shall document the selection in accordance with 1871.604–4(c).

(d) Offerors determined not to be finalists or not selected for contract award will be electronically notified.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9966, Feb. 27, 1998]

1871.604–3 Discussions with "Finalists".

(a) The procurement team member shall lead discussions with each finalist. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.306. It is expected that these discussions will be conducted on an informal basis with each finalist.

(b) After completion of discussions, each finalist shall be afforded an opportunity to revise its offer. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each finalist.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9967, Feb. 27, 1998]

1871.604–4 Selection of "Best Value" Offer.

(a) The procurement team member shall be the source selection official.

(b) The BVS source selection is based on the premise that, if all offers are of approximately equal qualitative merit, award will be made to the offer with the lowest evaluated price (fixed-price contracts) or the lowest most probable cost (cost type contracts). However, the Government will consider awarding to an offeror with higher qualitative merit if the difference in price is commensurate with added value. Conversely, the Government will consider making award to an offeror whose offer has lower qualitative merit if the price (or cost) differential between it and other offers warrant doing so.

(c) *Documentation.* Rationale for selection of the successful offeror shall be recorded in a selection statement which succinctly records the value characteristics upon which selection was made. The statement need not and should not reveal details of the successful offer that are proprietary or business sensitive. Since the value characteristics are expressed in performance terms, the reasons for selection can focus on results to be achieved, rather than the detailed approach the offeror will use. The statement shall also comment on the rationale used to equate cost and qualitative merit. Little or no additional analysis is required when the selected offeror possessed the highest merit and lowest price. When a marginal analysis is made between value characteristics and price (or cost)—in most cases this will be a subjective, integrated assessment of all pertinent factors—specific rationale should be provided to the extent possible. It is expected that the statement will not ordinarily exceed one page. Where the procurement is closely contested, it would be prudent to expand on the rationale provided in the statement.

(d) The name of the offeror(s) selected for award shall be electronically transmitted to the offerors which will serve as a notification to those offerors that were not selected (see 1871.505). The selection statement may be made available at the buying team's discretion.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4477, Jan. 30, 1997, unless otherwise noted.

1872.000 Scope of part.

This part prescribes policies and procedures for the acquisition of investigations.

Subpart 1872.1—The Investigation Acquisition System

1872.101 General.

The investigation acquisition system encourages the participation of investigators and the selection of investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate from the acquisition process, but requiring the same management and discipline to assure compliance with statutory requirements and considerations of equity.

1872.102 Key features of the system.

(a)(1) Use of the system commences with the Enterprise Associate Administrator's determination that the investigation acquisition process is appropriate for a program. An Announcement of Opportunity (AO) is disseminated to the interested scientific and technical communities. The AO is a form of broad agency announcement (BAA) (see FAR 35.016 and 1835.016 for general BAA requirements). This solicitation does not specify the investigations to be proposed but solicits investigative ideas which contribute to broad objectives. In order to determine which of the proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the fields represented by the proposals. Care should be taken to avoid conflicts of interest. These evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee, serving as staff to the Enterprise Associate Administrator or designee when source selection authority is delegated, reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed.

(2) The Program AA, or designee, selects the proposals that will participate in the program. Once selected, an investigator is assigned appropriate responsibilities relating to the investigation through a contract with the institution. For foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

(b) The AO process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case:

(1) The AO shall be signed by the Program AA and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

(2) An evaluation team shall be formed including recognized peers of the investigators.

(3) A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

(4) A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the AO, cost, and schedule constraints.

(5) A steering committee appointed by the appropriate Program AA shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

(6) The Source Selection Official shall be the Program AA or the Program AA's designee.

(c) Payloads will be formulated consisting of investigations selected through the AO process and/or other authorized methods.

[62 FR 4477, Jan. 30, 1997, as amended at 64 FR 14641, Mar. 26, 1999]

1872.103 Management responsibilities.

(a) Program AAs are responsible for overseeing the process and for making key decisions essential to the process including:

(1) Determination to use the investigation acquisition system.

(2) Appointment of the steering committee members.

(3) Designation of a staff to assure uniformity in the issuance of the AO and conformity with the required procedures in the evaluation and selection.

(4) Reuse, to the maximum extent practicable, of space hardware and support equipment.

(5) Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

(6) Issuance of the AO.

(7) Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

(8) Assure consideration is given to minorities in the establishment of peer groups, distribution of the AO and in the selection of investigations.

(9) Provide a framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

(b) The Program AA should call upon any required experts throughout the process.

Subpart 1872.2—Applicability of the Process

1872.201 General.

The system used for acquisition of investigations is separate from the agency procedures for acquisition of known requirements. A decision to use this special acquisition process will be based on a determination that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other documentation should discuss the proposed mode of investigations selection.

1872.202 Criteria for determining applicability.

(a) The decision to use the investigations acquisition process as an alternative to the normal planning and acquisition process can only be made after consideration of the conditions which require its use. All of the following conditions should exist before deciding that the system is applicable:

(1) NASA has a general objective which can be furthered through novel experimental approaches. To develop such approaches, NASA wishes to draw upon the broadest possible reservoir of ideas.

(2) Choices must be made among competing ideas in expanding knowledge.

(3) Individual participation of an investigator is essential to exploitation of the opportunity.

(b) The investigations acquisition process shall not be used when any of the following characteristics are present:

(1) The requiring office can define a requirement sufficiently to allow for normal acquisition.

(2) The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

1872.203 Applicable programs and activities.

The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it

has been used successfully in the following types of activities:

(a) Exploration and space research flights. (1) Examples include Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

(2) Types of opportunity include:

(i) Participation as a Principal Investigator (PI) responsible for conceiving and conducting a space investigation (This may involve a major piece of instrumentation. In the case of a ''facility'' or ''multiuser'' payload, each PI's responsibilities would ordinarily involve a relatively minor portion of the total instrument.);

(ii) An opportunity to serve on a PI's team as a member or Co-Investigator;

(iii) An opportunity that generally involves the use of data from another investigator's instrument as a guest investigator or guest observer (Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.); and

(iv) A team formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

(3) The investigation acquisition process may be applicable to all types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities.

(b) Minor missions. (1) Examples include research aircraft, sounding rockets, balloons, and minor missions that are generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

(2) Types of opportunity include:

(i) PIs responsible for investigation; and

(ii) Data use or analysis.

(3) Opportunities for participation on minor missions are generally suitable for normal acquisition procedures. The use of an announcement describing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Normal acquisition procedures shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

(c) Operational and operational prototype spacecraft. (1) Examples include spacecraft built for NASA and other agencys' missions.

(2) The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal acquisition procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the investigation acquisition process is not required.

(d) Supporting Research and Technology (SR&T). (1) Examples include studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

(2) Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal acquisition procedures should be used. A general announcement of area of interest could be made when greater participation is deemed advisable.

1872.204 Approval.

The Program AA is responsible for determining whether or not to use the investigations acquisition process. Normally on major projects, or when a

project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Subpart 1872.3—The Announcement of Opportunity

1872.301 General.

An announcement of opportunity (AO) is characterized by its generality. However, it is essential that the AO contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the AO will depend on the objective. The purpose is to get adequate information to assess the relevance, merit, cost, and management requirements without overburdening the proposer.

1872.302 Preparatory effort.

(a) Headquarters offices and the responsible project installation must consult prior to release of the AO.

(b) The program office shall:

(1) Synopsize the AO in the Commerce Business Daily and on the NAIS prior to release.

(2) Determine if there is instrumentation or support equipment available which may be appropriate to the AO with all necessary background data considered essential for use by a proposer;

(3) Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the AO; and

(4) Assure mandatory provisions are contained in the AO.

(c) Other methods of dissemination of the AO may also be used, such as the use of press releases, etc. When possible, the AO should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

[62 FR 4477, Jan. 30, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1872.303 Responsibilities.

(a) The program office originator is responsible for the content of the AO and coordination with concerned Headquarters offices and field installations. All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with this part and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

(b) The Program Office is also responsible for coordinating the AO with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautical Programs).

(c) Concurrence of the Office of Procurement is required before issuance of an AO.

[62 FR 4477, Jan. 30, 1977, as amended at 63 FR 32764, June 16, 1998; 64 FR 36606, July 7, 1999]

1872.304 Proposal opportunity period.

(a) The AO must accommodate to the maximum extent practicable opportunities afforded by the Shuttle/Spacelab flights. The following methods may be used to enable an AO to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

(1) The AO may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

(2) The AO may be issued establishing a single proposal submission date. However, the AO could provide that NASA amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired within the AO objectives.

(3) The AO may provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the AO, and payload funding and availability.

(b) Generally, a core payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended AOs. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original AO but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

(c) Any proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see 1872.403–1(e)), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

1872.305 Guidelines for Announcement of Opportunity.

(a) The AO should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each AO will identify the originating program office and be numbered consecutively by calendar year, e.g., OA–1–95, OA–2–95; OLMSA–1–95; OSS–1–95; etc. The required format and detailed instructions regarding the contents of the AO are contained in 1872.705.

(b) The General Instructions and Provisions, Appendix A (see 1872.705–1) are necessary to accommodate the unique aspects of the AO process. Therefore, they must be appended to each AO.

(c) At the time of issuance, copies of the AO must be furnished to Headquarters, Office of Procurement (Code HS) and Office of General Counsel (Code GK).

(d) Proposers should be informed of significant departures from scheduled dates for activities related in the AO.

[62 FR 4477, Jan. 30, 1997, as amended at 64 FR 36606, July 7, 1999]

1872.306 Announcement of opportunity soliciting foreign participation.

Foreign proposals or U.S. proposals with foreign participation shall be treated in accordance with 1835.016–70. Additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix B and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

[64 FR 48562, Sept. 7, 1999]

1872.307 Guidelines for proposal preparation.

While not all of the guidelines outlined in Appendix B will be applicable in response to every AO, the investigator should be informed of the relevant information required. The proposal may be submitted on a form supplied by the Program Office. However, the proposal should be submitted in at least two sections:

(a) Investigation and Technical Section; and (b) Management and Cost Section as described in Appendix B.

Subpart 1872.4—Evaluation of Proposals

1872.401 General.

(a) The evaluation process considers the aspects of each proposal by the following progressive sorting:

(1) A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in 1872.403. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the AO objectives.

(2) Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the project office at the installation responsible for the project.

(3) Final reviews are performed by the program office and the steering committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the AO's objectives within programmatic constraints.

(b) The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan should be developed before issuance of the AO. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each AO. A fuller discussion of the evaluation and selection process is included in the following sections of this subpart.

1872.402 Criteria for evaluation.

(a) Each AO must indicate those criteria which the evaluators will apply in evaluating a proposal. The relative importance of each criterion must also be stated. This information will allow investigators to make informed judgments in formulating proposals that best meet the stated objectives.

(b) Following is a list of general evaluation criteria appropriate for inclusion in most AOs:

(1) The scientific, applications, and/or technological merit of the investigation.

(2) The relevance of the proposed investigation to the AO's stated scientific, applications, and/or technological objectives.

(3) The competence and experience of the investigator and any investigative team.

(4) Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

(5) The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

(6) Cost and management aspects will be considered in all selections.

(7) Other or additional criteria may be used, but the evaluation criteria must be germane to the accomplishment of the stated objectives.

(c) Once the AO is issued, it is essential that the evaluation criteria be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the AO will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

1872.403 Methods of evaluation.

Alternative methods are available to initiate the evaluation of proposals received in response to an AO. These are referred to as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed to categorize the proposals. Following categorization, those proposals still in consideration will be processed to the selection official.

1872.403–1 Advisory subcommittee evaluation process.

(a) Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals. One or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the AO's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

(1) The subcommittee normally should be established on an ad hoc basis.

(2) Qualifications and acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations are not sufficient qualifications.

(3) The executive secretary of the subcommittee must be a full-time NASA employee.

(4) Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

(5) Care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

(6) The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee.

(b) It may not be possible to select a subcommittee fully satisfying all of the conditions described in paragraph (a) of this section. It is the responsibility of the nominating and appointing officials to make trade-offs, where necessary, among the criteria in paragraph (a) of this section. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

(c) Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, ''Establishment, Operation, and Duration of NASA Advisory Committees.'' The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

(d) It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or all of the members have served previously. This briefing of subcommittee members should include:

(1) Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

(2) Review of the program goals, AO objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

(3) Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

(4) Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific

and/or technical merit in accordance with the evaluation criteria.

(5) Instruction for documentation of deliberations and categorizations of the subcommittee.

(6) Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for employees of the National Aeronautics and Space Administration, 5 CFR part 6901, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

(7) Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requestor demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

(e) The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

(1) Category I—Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the AO's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

(2) Category II—Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

(3) Category III—Scientifically and technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

(4) Category IV—Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

(f) A record of the deliberations of the subcommittee shall be prepared by the assigned executive secretary and shall be signed by the Chairperson. The minutes shall contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

1872.403–2 Contractor evaluation process.

(a) The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an AO requires the approval of the Program AA. Prior to the use of this method, discussion should be held with the Office of Acquisition.

(b) It is NASA policy to avoid situations in the acquisition process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

(1) Is given an unfair competitive advantage over other companies with respect to future NASA business;

(2) Is placed in position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

(3) Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

(c) To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will be incorporated into the contract:

(1) No employee of the contractor will be permitted to propose in response to the AO;

(2) The ''Limitation on Future Contracting'' clause contained in 1852.209–71 will be included in all such contracts; and

(3) Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

(d) The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

(e) The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

(1) The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

(2) These panels will be composed of scientists and specialists qualified to evaluate the proposals;

(3) The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

(4) The contractor will report each panel's membership to NASA for approval; and

(5) The contractor must make all the necessary arrangements with the panel members.

(f) The evaluation support by the contractor's panels of experts will be accomplished as follows:

(1) The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria in the AO and will record their strengths and weaknesses;

(2) The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

(3) The chairperson of each panel shall certify that the evaluation report correctly represents the findings of the review panel; and

(4) A final report will be submitted as provided in the contract.

(g) A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in 1872.403–1(e)(1), Advisory Subcommittee Evaluation Process. A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

[62 FR 4477, Jan. 30, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1872.403–3 Government evaluation process.

(a) The Program AA may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

(b) Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the AO evaluation criteria. It is important that a subcommittee's evaluation not be influenced by others either within or outside of NASA.

(c) The subcommittee members will not contact the proposers for additional information.

(d) The subcommittee members will classify the proposals in accordance

with the four categories indicated in 1872.403–1(e)(1). Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

1872.404 Engineering, integration, and management evaluation.

(a) The subcommittee responsible for categorization of each proposal in terms of its scientific applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

(b) This information should be provided at the discretion of the Headquarters Program Office by the Project Office at the installation. This information can be in general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

(c) Following categorization, the Project Office shall evaluate proposals in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center.

(d) In assessing proposed costs, the evaluation must consider:

(1) The investigation objective.

(2) Comparable, similar or related investigations.

(3) Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

(4) Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

(e) The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

(f) Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the inter-faces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

(1) Whether the instrument requires further definition;

(2) Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

(3) Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

(4) Whether integration of the instrument is feasible.

(g) In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

(1) With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

(2) A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

(3) The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

1872.405 Program office evaluation.

(a) A Program Office responsible for the project or program at Headquarters will receive the evaluation of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations should facilitate sound selection decisions by the Program AA. Three sets of recommendations result from the Program Office evaluation:

(1) Optimum payload or program of investigations, or options for alternative payloads or programs.

(2) Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

(3) Upon consideration of the guidelines contained in 1872.502(a)(3), recommending responsibility for instrument development.

(b) The Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an appropriate probability of technical success within the estimated probable cost. The Headquarters Program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

(c) It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

(1) The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

(2) The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

(3) The investigative area is critical to the program and competitive approaches need to be developed further

to allow selection of the optimum course.

(d) Based on evaluation of these considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program AA responsible for selection:

(1) The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

(2) The expected costs required to develop instrumentation to the point of ''demonstrated capability.''

(3) The risk involved in added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

(4) Identification of opportunities, if any, for inclusion of such investigations in later missions.

(e) In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a final commitment to the investigation.

(f) As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in 1872.502(a)(3).

(g) The range of options for responsibility for the instrumentation consists of:

(1) Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to provide the instrumentation for integration.

(2) Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(i) Provision of instrument specifications.

(ii) Approval of specifications.

(iii) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for the investigation.

(iv) Participation in design reviews and other appropriate reviews.

(v) Review and concurrence in changes resulting from design reviews.

(vi) Participation in configuration control board actions.

(vii) Advice in definition of test program.

(viii) Review and approval of test program and changes thereto.

(ix) Participation in conduct of the test program.

(x) Participation in calibration of instrument.

(xi) Participation in final inspection and acceptance of the instrument.

(xii) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(xiii) Participation in the development and support of the operations plan.

(xiv) Analysis and interpretation of data.

(h) The Principal Investigator should as a minimum:

(1) Approve the instrument specification.

(2) Advise the project manager in development and fabrication.

(3) Participate in final calibration.

(4) Develop and support the operations plan.

(5) Analyze and interpret the data.

(i) The Project Installation is responsible for implementing the program or project and should make recommendations concerning the role for the Principal Investigators. The Program AA will determine the role, acting upon the advice of the Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an

appeal to the Program AA and the right to withdraw from participation.

(j) The Program Office should make a presentation to the Steering Committee with supporting documentation on the decisions to be made by the responsible Program AA.

1872.406 Steering committee review.

(a) The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program AA. The Steering Committee applies the collective experience of representatives from the program and discipline communities and offers a forum for discussing the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

(b) The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

(1) Review compliance with procedures governing application of the AO process.

(2) Ensure that adequate documentation has been made of the steps in the evaluation process.

(3) Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program AA.

(c) The Purpose in exercising the first of the responsibilities in paragraph (b) of this section is to ensure equity and consistency in the application of the process. The Steering Committee is intended to provide the necessary reviews and coordination inherent in conventional acquisition practices.

(d) The second and third responsibilities of the Steering Committee in paragraph (b) are technical. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office for completeness and appropriateness before forwarding to the Program AA. Most important in this review are:

(1) Degree to which results of evaluations and recommendations follow logically from the criteria in the AO.

(2) Consistency with objectives and policies generally beyond the scope of Project/Program Offices.

(3) Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

(4) Sufficiency of reasons stated for determining responsibilities for instrument development.

(5) Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

(6) Sufficiency of reasons for classifying proposed investigations in their respective categories.

(7) Fair treatment of all proposals.

(e) The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

1872.407 Principles to apply.

(a) 1872.406 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this subpart 1872.4 as a guide.

(b) Significant deviations from the provisions of this part 1872 must be fully documented and be approved by the Program AA after concurrence by

the Office of General Counsel and Office of Acquisition.

Subpart 1872.5—The Selection Process

1872.501 General.

The Program AA is responsible for selecting investigations for contract negotiation. This decision culminates the evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized)	Summary evaluation (strengths and weaknesses).	Report to Subcommittee.
Subcommittee individual	Science and technological relevance, value, and feasibility.	Categorization of proposals.
Project Office	Engineering/cost/integration/management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with Announcement and program objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections and compliance with proper procedures.	Recommendations to Program Associate Administrator.

1872.502 Decisions to be made.

(a) The selection decisions by the Program AA constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the AO's objectives, and their consonance with budget constraints to make the following decisions:

(1) Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(i) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(ii) Assurance that the evaluation criteria were applied consistently to all proposed investigations.

(iii) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(iv) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

(2) Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

(3) Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be competitively procured. The following guidelines apply:

(i) The hardware required should be subjected to competitive solicitation where it is clear that the capability is not sufficiently unique to justify sole source acquisition.

(ii) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution,

(A) When the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal;

(B) When the fabricator offers unique capabilities that are not available from another source;

(C) When the selection official determines that the proposed hardware contributes so significantly to the value of

the investigator's proposal as to be an integral part of it.

(iii) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(iv) If a NASA employee submits a proposal as a principal investigator, any requirement for hardware necessary to perform the investigation must either be competed by the installation acquisition office or a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NASA FAR Supplement.

(4) Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(i) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(ii) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(iii) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

(5) Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

(b) In the process of making the determinations described in paragraph (a)(1) of this section, the Program AA may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, the Program AA may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program AA's decision.

1872.503 The selection statement.

Upon completion of deliberations, the responsible Program AA shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

(a) The general and specific evaluation criteria and relative importance used for the selection.

(b) The categorizations provided by the subcommittee and the rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

(c) A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a combination with other investigators.

(d) The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

(e) An indication of the plan and acquisition using the regular acquisition processes, if the Principal Investigator is not to acquire the hardware.

(f) A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

(g) A statement indicating use of Government-owned space flight hardware and/or support equipment.

1872.504 Notification of proposers.

(a) It is essential that investigators whose proposals have no reasonable chance for selection be so apprised as soon as practicable. The responsible Program Office will, upon such determination, notify investigators of that fact with the major reason(s) why the proposals were so considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing.

(b) Letters of notification will be sent to those Principal Investigators selected to participate. This letter should not commit the agency to more

than negotiations for the selected investigation, but it should indicate the decision made and contain:

(1) A concise description of the Principal Investigator's investigation as selected, noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

(2) The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

(3) A description of the role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

(3) Identification of the principal technical and management points to be treated in subsequent negotiations.

(5) Any rights to be granted on use of data, publishing of data, and duration of use of the data.

(6) Where applicable, indication that a foreign selectee's participation in the program will be arranged between the Office of External Relations, and the foreign government agency which endorsed the proposal.

(c) In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible Office of External Relations, addressing the following:

(1) The scientific technological objective of the effort.

(2) The period of time for the effort.

(3) The responsibilities of NASA and of the sponsoring governmental agency; these may include:

(i) Provision and disposition of hardware and software.

(ii) Responsibilities for reporting, reduction and dissemination of data.

(iii) Responsibilities for transportation of hardware.

(4) Any additional information pertinent to the conduct of the experiment.

(d) Using the information provided above, the Office of External Relations will negotiate an agreement with the sponsoring foreign agency.

(e) Notices shall also be sent to those proposers not notified pursuant to paragraphs (a) through (d) of this section, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

[62 FR 4477, Jan. 30, 1997, as amended at 48562, Sept. 7, 1999]

1872.505 Debriefing.

It is the policy to debrief, if requested, unsuccessful proposers of investigations in accordance with FAR 15.5. The following shall be considered in arranging and conducting debriefings:

(a) Debriefing shall be done by an official designated by the responsible Program AA. Any other personnel receiving requests for information concerning the rejection of a proposal shall refer to the designated official.

(b) Debriefing of unsuccessful offerors shall be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

(c) Material discussed in debriefing shall be factual and consonant with the documented findings of several stages of the evaluation process and the selection statement.

(d) The debriefing official shall advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

(e) The debriefing official shall not discuss other unsuccessful proposals, rankings, votes of members, or attempt to make a point-by-point comparison with successful proposals.

(f) A memorandum of record of the debriefing shall be provided the Chairperson of the Steering Committee.

[62 FR 4477, Jan. 30, 1997, as amended at 63 FR 9967, Feb. 27, 1998]

Subpart 1872.6—Payload Formulation

1872.601 Payroll formulation.

(a) Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through AOs, those generated by in-house research, unsolicited proposals and those derived from agreements between NASA and

external entities. However, it is anticipated that the primary source of NASA payload elements will be the AO process. Generally, proposals for payload elements submitted outside the AO process will not be selected if they would have been responsive to an AO objective.

(b) Payload elements for STS flights fall into two major categories. ''NASA or NASA-related'' payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. ''Non-NASA'' payload elements are those which require only STS operation services from NASA and interface with NASA through the Office of Space Flight.

(c) In general, a Program Office will be designated responsibility for formulating the ''NASA or NASA-related'' portion of an STS payload. The Office of Space Flight will be responsible for formulating the ''non-NASA'' portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type. Resource allocation for mixed missions will be determined by the Program Office and the Office of Space Flight.

Subpart 1872.7—Acquisition and Other Considerations

1872.701 Early involvement essential.

(a) The distinctive feature of the AO process is that it is both a program planning system and an acquisition system in one procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Acquisition is involved with the purchase of property and services to carry out the selected investigations.

(b) Because of both the programmatic and multi-functional aspects of the AO process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and complies with statutory requirements and acquisition policy.

(c) The planning, preparation and selection schedule for the investigation should commence early enough to meet statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

1872.702 Negotiation, discussions, and contract award.

(a) The AO shall be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the AO mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

(b) Significant items for consideration after receipt of proposals:

(1) Late proposals—The policy on late proposals contained in 1815.208 is applicable. Potential investigators should be informed of this policy. In the AO context, the selection official or designee will determine whether a late proposal will be considered.

(2) Competitive considerations. (i) The proposals submitted in response to the AOs are not necessarily fully comparable. However, all proposals within the scope of an opportunity must be evaluated in accordance with the criteria in the AO.

(ii) Cost must be considered in the evaluation if costs are involved in the investigation. General cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(iii) Further information should be obtained, as necessary, by the Installation Project Office and/or any other evaluation group authorized by the selection official and from the investigators whose proposals are being considered. This is similar to the acquisition procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Good judgment is required by in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be

prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(iv) During the conduct of discussions, all proposers being considered shall be offered an equitable opportunity to submit cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should note compliance of the investigators with that cut-off date.

(c) Significant items for consideration before award:

(1) Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the AO process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

(2) Selection of Investigator/Contractor—The selection decision of the Program AA approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

[62 FR 4477, Jan. 30, 1997, as amended at 63 FR 9967, Feb. 27, 1998]

1872.703 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement.

The AO process supplants normal acquisition procedures only to the extent necessary to meet the distinctive features of the process. This process is not intended to conflict with any established statutory requirements.

1872.704 Other administrative and functional requirements.

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract.

1872.705 Format of Announcement of Opportunity (AO).

Use the following format instructions when drafting AOs:

OMB APPROVAL NUMBER 2700–0085

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Washington, DC 20546

Announcement of Opportunity

AO No. (Issuance Date)

(Descriptive Heading)

I. DESCRIPTION OF THE OPPORTUNITY

This section should set forth the basic purpose of the AO and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists. In those instances where proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, a qualifying statement should be included to indicate that this AO does not constitute an obligation for the Government to carry the effort to completion.

II. AO OBJECTIVES

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. BACKGROUND

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader understand the relevance of the opportunity.

IV. PROPOSAL OPPORTUNITY PERIOD

This section should provide the proposal opportunity period(s). The following methods may be used individually or in conjunction for establishing the proposal opportunity period(s):

(a) The AO may be issued establishing a single date by which proposals may be received. However, the AO could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired.

(b) The AO may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the AO.

(c) The AO may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. REQUIREMENTS AND CONSTRAINTS

(a) This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user for observer, need for preliminary or raw data analysis and interim reports. It will specify the planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

(b) When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the AO should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. PROPOSAL SUBMISSION INFORMATION

(a) Preproposal Activities—In this section, the AO will indicate requirements and activities such as the following:

(1) Submittal of ''Notice of Intent'' to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit ''Notice of Intent.''

(2) Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before

the conference in order to prepare replies.

(3) The name and address of the scientific or technical contact for questions or inquiries.

(4) Any other preproposal data considered necessary.

(b) Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

(1) Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (i) Investigation and Technical Section; and (ii) Management and Cost Section.

(2) Signatory—The proposal must be signed by an institutional official authorized to ensure institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

(3) Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

(4) Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, OFFICE OF (PROGRAM)

Code

AO No.

Washington, DC 20546

(5) Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

(c) Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

(d) Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, ''General Instructions and Provisions.'' This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

(e) Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference than should be made to the cost proposal certifications indicated in Appendix B, ''General Instructions and Provisions.''

VII. PROPOSAL EVALUATION, SELECTION, AND IMPLEMENTATION

(a) Evaluation and Selection Procedure.

(1) This section should notify the proposers of the evaluation process.

(2) For example, a statement similar to the following should be included:

''Proposals received in response to this AO will be reviewed by a subcommittee appointed by the (appropriate Program AA). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this AO and so categorize the proposals. Those proposals with are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations.''

(b) Evaluation Criteria.

(1) This section should indicate that the selection proposals which best meet the specific scientific, applications, and/or technological objectives, stated in the AO, is the aim of the solicitation. This section should list the

criteria to be used in the evaluation of proposals and indicate their relative importance. See NASA FAR Supplement 1872.402 for a listing of criteria generally appropriate.

(2) This section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. SCHEDULE

This section should include the following, as applicable:

(a) Preproposal conference date.

(b) Notice of Intent submittal date.

(c) Proposal submittal date(s).

(d) Target date for announcement of selections.

IX. APPENDICES

(a) General Instructions and Provisions (must be attached to each AO).

(b) Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator

for (Program)

1872.705–1 Appendix A: General Instructions and Provisions.

Include the following in all Announcements of Opportunity:

I. INSTRUMENTATION AND/OR GROUND EQUIPMENT

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that becomes available, with or without modification, that will meet the investigative objectives.

II. TENTATIVE SELECTIONS, PHASED DEVELOPMENT, PARTIAL SELECTIONS, AND PARTICIPATION WITH OTHERS

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. SELECTION WITHOUT DISCUSSION

The Government reserves the right to reject any or all proposals received in response to this AO when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. FOREIGN PROSPOSALS

See Appendix B, Management Plan and Cost Plan, paragraph (a)(3).

V. TREATMENT OF PROPOSAL DATA

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should place the following notice on the title page

of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. Information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice. To prevent inadvertent disclosure, proposal data shall not be included in submissions (e.g. final reports) that are routinely released to the public.

RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL AND QUOTATION INFORMATION (DATA)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. STATUS OF COST PROPOSALS (U.S. PROPOSALS ONLY)

The investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution may be required to resubmit cost information in accordance with FAR 15.403–5.

VII. LATE PROPOSALS

Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.

VIII. SOURCE OF SPACE TRANSPORTATION SYSTEM INVESTIGATIONS

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources.

IX. DISCLOSURE OF PROPOSALS OUTSIDE GOVERNMENT

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. EQUAL OPPORTUNITY (U.S. PROPOSALS ONLY)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

EQUAL OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7)

rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO–1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(h) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(i) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(j) The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(k) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. PATENT RIGHTS

(a) For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at 1852.227–70, ''New Technology,'' shall apply. Such contractor may, in advance of contract, request waiver of rights as set forth in the provision at 1852.227–71, ''Request for Waiver of Rights to Inventions.''

(b) For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227–11, ''Patent Rights—Retention by the Contractor (Short Form)'' (as modified by 1852.227–11), shall apply.

[62 FR 4477, Jan. 30, 1997, as amended at 63 FR 9967, Feb. 27, 1998; 64 FR 48562, Sept. 7, 1999]

1872.705–2 Appendix B: Guidelines for Proposal Preparation.

The following guidelines apply to the preparation of proposals in response to an AO. The material is a guide for the

proposer and not intended to be encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should provide information relative to those items applicable or as required by the AO.

I. COVER LETTER

A letter or cover page should be forwarded with the proposal signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization responsible for the proposal.

II. TABLE OF CONTENTS

The proposal should contain a table of contents.

III. IDENTIFYING INFORMATION

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

INVESTIGATION AND TECHNICAL PLAN

(a) Investigation and Technical Plan

The investigation and technical plan generally will contain the following:

(1) Summary. A concise statement about the investigation, its conduct, and the anticipated results.

(2) Objective and Significant Aspects. A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

(3) Investigation Approach.

(i) Fully describe the concept of the investigation.

(ii) Detail the method and procedure for carrying out the investigation.

(b) Instrumentation

This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

(1) Instrument Description—This section should fully describe the instrument and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

(2) Instrument Integration—This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab, Shuttle Orbiter, Space Station, etc. These include, but are not limited to, volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluent); data processing requirements.

(3) Ground Operations—This section should identify requirements for prelaunch or post-launch ground operations support.

(4) Flight Operations—This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

(c) Data Reduction and Analysis

A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of Interior, Sioux Falls, SD, for earth observations data.

(d) Orbiter Crew and/or Payload Specialist Training Requirement

A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

MANAGEMENT PLAN AND COST PLAN

(a) Management Plan

The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

(1) Management

(i) The management plan sets forth the approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

(ii) The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

(iii) The plan should describe the proposed method of instrument acquisition. It should include the following, as applicable.

(A) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(B) Method and basis for the selection of the instrument fabricator.

(C) Unique capabilities of the instrument fabricator that are not available from any other source.

(D) Characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(E) Availability of personnel to administer the instrument contract and technically monitor the fabrication.

(F) Status of development of the instrument.

(G) Method by which the investigator proposes to:

(*a*) Prepare instrument specifications.

(*b*) Review development progress.

(*c*) Review design and fabrication changes.

(*d*) Participate in testing program.

(*e*) Participate in final checkout and calibration.

(*f*) Provide for integration of instrument.

(*g*) Support the flight operations.

(*h*) Coordinate with co-investigators, other related investigations, and the payload integrator.

(*i*) Assure safety, reliability, and quality.

(*j*) Provide required support for Payload Specialist(s), if applicable.

(H) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

(2) Facilities and Equipment

All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

(3) Additional Guidelines Applicable to Non-U.S. Proposers Only

The following guidelines are established for foreign responses to NASA's AO. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures

to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

(i) Where a ''Notice of Intent'' to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the AO.

(ii) Unless otherwise indicated in the AO, proposals will be submitted in accordance with this Appendix. Proposals should be typewritten and written in English. Foreign entities are generally not eligible for funding from NASA. Therefore, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included (unless otherwise noted in the AO).

(iii) Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates that the proposal merits careful consideration by NASA and that, if the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

(iv) Proposals including the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each AO.

(v) Those proposals received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

(vi) Shortly after the deadline for each AO, the Program Office will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgment will be provided to each proposer.

(vii) Successful and unsuccessful proposers will be contacted directly by the NASA Program Officer coordinating the AO. Copies of these letters will be sent to the sponsoring Government agency.

(viii) NASA's Office of External Relations will then begin making the arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(A) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(B) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

(b) Cost Plan (U.S. Investigations Only)

The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

(1) The categories of cost should include the following:

(i) Director Labor—List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

(ii) Overhead—Include indirect costs. Usually this is in the form of a percentage of the direct labor costs.

(iii) Materials—This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

(iv) Subcontracts—List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

(v) Special Equipment—Include a list of special equipment with lead and/or development time.

(vi) Travel—List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

(vii) Other Costs—Costs not covered elsewhere.

(viii) General and Administrative Expense—This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

(ix) Fee (if applicable).

(2) Separate schedules, in the above format, should be attached to show total cost allocable to the following:

(i) Principal Investigator and other Investigators' costs.

(ii) Instrument costs.

(iii) Integration costs.

(iv) Data reduction and analysis including the amount and cost of computer time.

(3) If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

(4) Use of NASA funds. NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

[62 FR 4477, Jan. 30, 1997, as amended at 64 FR 48562, Sept. 7, 1999; 65 FR 3154, Jan. 20, 2000]

1872.705–3 Appendix C: Glossary of Terms and Abbreviations Associated with Investigations.

Advisory Committee Subcommittee—Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO)—A document used to announce opportunities to participate in NASA programs.

AO Process—A term used to describe the program planning and acquisition procedure used to acquire investigative effort, initiated by an AO.

Categorization—The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; Category III—sound investigations requiring further development; Category IV—rejected.

Co-Investigator (Co-I)—Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users—Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments—Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR)—The regulations governing the conduct of acquisition.

Flight—That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle ''flight'' means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigaton—Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity—A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators—Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers

Investigaton—Used interchangeably with ''Experiments.''

Investigation Team—A group of investigators collaborating on a single investigation.

Investigator—A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission—The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement—Acquisition regulations promulgated by NASA in addition to the FAR.

NMI—NASA Management Instruction.

Notice of Intent—A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload—A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group—A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review—The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI)—A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program—An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project—Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office—An office generally established at a NASA field installation to manage a project.

Selection Official—The NASA official designated to determine the source for award of a contract or grant.

Space Facility—An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee—A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office—An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee—An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T)—The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team—A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader—The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member—A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.