

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 1827—PATENTS, DATA, AND COPYRIGHTS

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#### 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 order 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)

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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

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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 or 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 record-keeping 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 contract 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, para-

graph (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 ex-

plain 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 Alter-

nate 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 contracting 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 with all applicable export control

## 1827.670-2

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.

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### 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 sub-

mitted 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—

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(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

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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

## 1829.203

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

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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.* Use 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.

**1830.7002-3**

(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 pe-

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riod 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

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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.

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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).

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### **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 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; 66 FR 29728, June 1, 2001]

#### **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

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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 per-

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centage 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

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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) and Small Business Technology Transfer (STTR) pro-

grams. 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; 66 FR 29728, June 1, 2001]

### **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.

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(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.

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1833.104 Protest to GAO.

1833.106 Solicitation provision and contract clause.

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### 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 Associate Administrator 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 General Accounting 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]

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**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 approval 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

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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 procurement from other sources would be impracticable.