

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

Subpart 1834.2—Earned Value Management System

Sec.

1834.201 Policy.

1834.203 Solicitation provisions and contract clause.

1834.203-70 NASA solicitation provision and contract clause.

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

SOURCE: 71 FR 66120, Nov. 13, 2006, unless otherwise noted.

Subpart 1834.2—Earned Value Management System

1834.201 Policy.

(a) Application of an Earned Value Management System (EVMS) is required for all acquisitions for development designated as major in accordance with OMB Circular A-11, and for development or production contracts and subcontracts, including those for flight and ground support requirements, and institutional requirements (facility, IT investment, etc.) as follows:

(i) For contracts and subcontracts valued at \$20M or more, and contracts and subcontracts for major acquisitions valued at less than \$20M, the EVMS shall comply with the guidelines in the ANSI/EIA-748 Standard.

(ii) For contracts and subcontracts valued at \$50M or more, the contractor shall have an EVMS that has been formally validated and accepted by the Government.

(iii) For contracts and subcontracts for other than major acquisitions valued at less than \$20M, earned value management application is optional and is a risk-based decision that is at the discretion of the program/project manager.

(iv) EVM is not required on contracts for non-developmental engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services. In these cases, application of EVM is at the dis-

cretion of the program/project manager.

(e) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA) office in determining the adequacy of proposed EVMS plans.

1834.203 Solicitation provisions and contract clause.

The FAR EVMS solicitation provisions and contract clause are not used in NASA contracts. See 1834.203-70 for the NASA EVMS solicitation provision and contract clause.

1834.203-70 NASA solicitation provision and contract clause.

Except for the contracts identified in 1834.201(a)(iv), the contracting officer shall insert—

(a) The provision at 1852.234-1, Notice of Earned Value Management System, in solicitations for contracts for—

(1) Development or production, including flight and ground support projects, and institutional projects (facility, IT investment, etc.), with a value exceeding \$20M; and

(2) Acquisitions of any value designated as major by the project manager in accordance with OMB Circular A-11; and

(b) The clause at 1852.234-2, Earned Value Management System, in solicitations and contracts with a value exceeding \$50M that include the provision at 1852.234-1. The contracting officer shall use the clause with its Alternate I when the contract value is less than \$50M.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1835.016-70 Foreign participation under broad agency announcements (BAAs).

1835.016-71 NASA Research Announcements.

1835.070 NASA contract clauses and solicitation provision.

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

SOURCE: 62 FR 4469, Jan. 30, 1997, unless otherwise noted.

1835.016-70 Foreign participation under broad agency announcements (BAAs).

(a) *Policy.* (1) NASA seeks the broadest participation in response to broad agency announcements, including foreign proposals or proposals including foreign participation. NASA's policy is to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs). NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, cooperative research efforts are implemented via international agreements between NASA and the sponsoring foreign agency or funding/sponsoring institution under which the parties agree to each bear the cost of discharging their respective responsibilities.

(2) In accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(3) NASA funding may not be used for subcontracted foreign research efforts. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted.

[64 FR 48561, Sept. 7, 1999, as amended at 69 FR 35272, June 24, 2004]

1835.016-71 NASA Research Announcements.

(a) *Scope.* An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An NRA shall not be used when the re-

quirement is sufficiently defined to specify an end product or service.

[62 FR 4469, Jan. 30, 1997, as amended at 62 FR 14017, Mar. 25, 1997; 63 FR 9967, Feb. 27, 1998. Redesignated and amended at 64 FR 48561, Sept. 7, 1999; 65 FR 12485, Mar. 9, 2000; 65 FR 46628, July 31, 2000; 65 FR 82297, Dec. 28, 2000; 66 FR 53547, Oct. 23, 2001; 67 FR 30604, May 7, 2002; 69 FR 35272, June 24, 2004]

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235-70, Center for AeroSpace Information, in all research and development contracts, and interagency agreements and cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235-71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offeror of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer shall ensure that the provision at 1852.235-72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions may be supplemented, but only to the minimum extent necessary.

(d) The contracting officer shall insert the clause at 1852.235-73, Final Scientific and Technical Reports, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work.

(1) The contracting officer, after consultation with and concurrence of the program or project manager and the center Export Control Administrator, shall insert the clause with its Alternate I when the contract includes "fundamental research" as defined at 22 CFR 120.11(8) and no prior review of data, including the final report, produced during the performance of the contract is required for export control or national security purposes before the contractor may publish, release, or otherwise disseminate the data.

(2) The contracting officer, after consultation with and concurrence by the program or project manager and where necessary the center Export Control

Administrator, shall insert the clause with its Alternate II, when prior review of all data produced during the performance of the contract is required before the contractor may publish, release, or otherwise disseminate the data. For example, when data produced during performance of the contract may be subject to export control, national security restrictions, or other restrictions designated by NASA; or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others.

(3) Except when Alternate II applies in accordance with paragraph (d)(2) of this section, the contracting officer shall insert the clause with its Alternate III in all SBIR and STTR contracts.

(e) The contracting officer shall insert a clause substantially the same as the clause at 1852.235-74, Additional Reports of Work—Research and Development, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work, when periodic reports, such as monthly or quarterly reports, or reports on the completion of significant units or phases of work are required for monitoring contract performance. The clause should be modified to reflect the reporting requirements of the contract and to indicate the timeframe for submission of the final report.

[68 FR 5231, Feb. 3, 2003, as amended at 70 FR 2022, Jan. 12, 2005]

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.

1836.203 Government estimate of construction costs.

1836.213-370 Additive and deductive items.

Subpart 1836.5—Contract Clauses

1836.513 Accident prevention.

1836.570 NASA solicitation provisions and contract clause.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

Subpart 1836.70—Partnering

1836.7004 NASA solicitation provision and contract clause.

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

SOURCE: 62 FR 4471, Jan. 30, 1997, unless otherwise noted.

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.(NASA supplements paragraph (c))

(c)(i) If the acquisition is by sealed bidding, the contracting officer shall file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall read the estimate, and record it in the same detail as the bids.

(ii) If the acquisition is by negotiation, the contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

1836.213-370 Additive and deductive items.

When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for a first or base bid item covering the work generally as specified and one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the contracting officer, before the opening of bids, shall record in the contract file the amount of funds available for the project and determine the low bidder and the items to be awarded in accordance with the provision at 1852.236-71, Additive or Deductive Items.

[62 FR 36721, July 9, 1997. Redesignated at 64 FR 5621, Feb. 4, 1999]

1836.513

Subpart 1836.5—Contract Clauses

1836.513 Accident prevention.

The contracting officer must insert the clause at 1852.223-70, Safety and Health, in lieu of FAR clause 52.236-13, Accident Prevention, and its Alternate I.

[67 FR 17016, Apr. 9, 2002]

1836.570 NASA solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 1852.236-71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236-72, Bids with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

(c) The contracting officer shall insert the clause at 1852.236-73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

(d) The contracting officer shall insert the provision at 1852.236-74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria. (NASA supplements paragraph (a))

(a)(2) The evaluation of specialized experience and technical competence shall be limited to the immediately preceding ten years.

(4) The evaluation of past performance shall be limited to the immediately preceding ten years.

(6) The architect-engineer selection board may also establish evaluation criteria regarding the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms

48 CFR Ch. 18 (10-1-08 Edition)

and firms that have not had prior NASA contracts.

[62 FR 4471, Jan. 30, 1997, as amended at 66 FR 53548, Oct. 23, 2001]

Subpart 1836.70—Partnering

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236-75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined that the benefits to be derived from partnering exceed the costs.

SOURCE: 63 FR 44170, Aug. 18, 1998, unless otherwise noted.

PART 1837—SERVICE CONTRACTING

Subpart 1837.1—Service Contracts—General

Sec.

1837.101 Definitions.

1837.104 Personal services contracts.

1837.110 Solicitation provisions and contract clauses.

1837.110-70 NASA solicitation provision and contract clauses.

1837.170 Pension portability.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy.

1837.203-70 Providing contractors access to sensitive information.

1837.203-71 Release of contractors' sensitive information.

1837.203-72 NASA contract clauses.

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

SOURCE: 62 FR 4472, Jan. 30, 1997, unless otherwise noted.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.104 Personal services contracts. (NASA supplements paragraph (b))

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA "to obtain services as authorized by Section 3109 of Title 5, United States Code." It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants.

[62 FR 4472, Jan. 30, 1997, as amended at 64 FR 12485, Mar. 9, 2000; 66 FR 53548, Oct. 23, 2001; 69 FR 63459, Nov. 2, 2004]

1837.110 Solicitation provisions and contract clauses.**1837.110-70 NASA solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at 1852.237-70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237-71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

[62 FR 4472, Jan. 30, 1997, as amended at 62 FR 36721, July 9, 1997; 62 FR 58688, Oct. 30, 1997]

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor con-

tractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237-71, Pension Portability, (see 1837.110-70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2—Advisory and Assistance Services**1837.203 Policy. (NASA supplements paragraph (c))**

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants).

[62 FR 4472, Jan. 30, 1997, as amended at 64 FR 51079, Sept. 21, 1999; 66 FR 53548, Oct. 23, 2001; 69 FR 63459, Nov. 2, 2004]

1837.203-70 Providing contractors access to sensitive information.

(a)(1) As used in this subpart, "sensitive information" refers to information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects: To impair the Government's

ability to obtain this type of information in the future; or to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

(2) As used in this subpart, "requiring organization" refers to the NASA organizational element or activity that requires specified services to be provided.

(3) As used in this subpart, "service provider" refers to the service contractor that receives sensitive information from NASA to provide services to the requiring organization. (b)(1) To support management activities and administrative functions, NASA relies on numerous service providers. These contractors may require access to sensitive information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure.

(2) As an initial step, the requiring organization shall identify when needed services may entail access to sensitive information and shall determine whether providing access is necessary for accomplishing the Agency's mission. The requiring organization shall review any service provider requests for access to information to determine whether the access is necessary and whether the information requested is considered "sensitive" as defined in paragraph (a)(1) of this section.

(c) When the requiring organization determines that providing specified services will entail access to sensitive information, the solicitation shall require each potential service provider to submit with its proposal a preliminary analysis of possible organizational conflicts of interest that might flow from the award of a contract. After selection, or whenever it becomes clear that performance will necessitate access to sensitive information, the service provider must submit a comprehensive organizational conflicts of interest avoidance plan.

(d) This comprehensive plan shall incorporate any previous studies performed, shall thoroughly analyze all organizational conflicts of interest that might arise because the service

provider has access to other companies' sensitive information, and shall establish specific methods to control, mitigate, or eliminate all problems identified. The contracting officer, with advice from Center counsel, shall review the plan for completeness and identify to the service provider substantive weaknesses and omissions for necessary correction. Once the service provider has corrected the substantive weaknesses and omissions, the contracting officer shall incorporate the revised plan into the contract, as a compliance document.

(e) If the service provider will be operating an information technology system for NASA that contains sensitive information, the operating contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources, which requires the implementation of an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use.

(f) NASA will monitor performance to assure any service provider that requires access to sensitive information follows the steps outlined in the clause at 1852.237-72, Access to Sensitive Information, to protect the information from unauthorized use or disclosure.

[70 FR 35554, June 21, 2005]

1837.203-71 Release of contractors' sensitive information.

Pursuant to the clause at 1852.237-73, Release of Sensitive Information, offerors and contractors agree that NASA may release their sensitive information when requested by service providers in accordance with the procedures prescribed in 1837.203-70 and subject to the safeguards and protections delineated in the clause at 1852.237-72, Access to Sensitive Information. As required by the clause at 1852.237-73, or other contract clause or solicitation provision, contractors must identify information they claim to be "sensitive" submitted as part of a proposal or in the course of performing a contract. The contracting officer shall

National Aeronautics and Space Administration

1839.107-70

evaluate all contractor claims of sensitivity in deciding how NASA should respond to requests from service providers for access to information.

[70 FR 35554, June 21, 2005]

1837.203-72 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.237-72, Access to Sensitive Information, in all solicitations and contracts for services that may require access to sensitive information belonging to other companies or generated by the Government.

(b) The contracting officer shall insert the clause at 1852.237-73, Release of Sensitive Information, in all solicitations, contracts, and basic ordering agreements.

[70 FR 35554, June 21, 2005]

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1829.1—General

Sec.

1839.107 Contract clause.

1839.107-70 NASA contract clause.

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

SOURCE: 62 FR 4473, Jan. 30, 1997, unless otherwise noted.

Subpart 1839.1—General

1839.107 Contract clause.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

1839.107-70 NASA contract clause.

(a)(1) The contracting officer shall insert the clause substantially as stated at 1852.239-70, Alternate Delivery Points, in solicitations and contracts for information technology when:

(i) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities; and

(ii) Delivery is F.O.B. destination to the contracting activity.

(2) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]