

PART 1733—PROTESTS, DISPUTES, AND APPEALS

Subpart 1733.2—Disputes and Appeals

Sec.

1733.203 Applicability.

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AUTHORITY: 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 51 FR 44296, Dec. 9, 1986, unless otherwise noted.

Subpart 1733.2—Disputes and Appeals

1733.203 Applicability.

(a) The Office of Personnel Management's (OPM) procurement executive shall make the determination prescribed under FAR 33.203(b).

(b) Requests for determinations under paragraph (a) of this section shall be submitted by OPM's contracting officer through OPM's head of the contracting activity to the procurement executive for further action.

1733.203–70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.

(a) The Interior Board of Contract Appeals (IBCA) has been designated by the Director of OPM to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by OPM. This delegation governs disputes between OPM and its prime contractors and does not encompass any claim made by a third party beneficiary of, or by a subscriber to, a Federal employee insurance program.

(b) The address of IBCA is 801 North Quincy Street, Arlington, VA 22203.

(c) IBCA rules of procedure can be found in 43 CFR part 4.

[51 FR 44296, Dec. 9, 1986, as amended at 68 FR 62022, Oct. 31, 2003]

1733.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evi-

dence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter through the head of the contracting activity to OPM's Offices of the Inspector General and the General Counsel.

1733.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Interior Board of Contract Appeals, 801 North Quincy Street, Arlington, VA 22203, and its procedures under 43 CFR part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by the FAR.

[51 FR 44296, Dec. 9, 1986, as amended at 51 FR 44296, Dec. 9, 1986]

1733.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to IBCA by certified mail within 5 days of receipt. OPM's Office of the General Counsel and the Department of the Interior's (DOI) Office of the Solicitor shall also be notified of the appeal by the contracting officer. 43 CFR 4.103.

(b) The contracting officer shall prepare and transmit the documentation and information required by 43 CFR 4.104 in the form of an appeal file to IBCA, OPM's Office of the General Counsel, DOI's Office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by IBCA.

1733.214 Contract clause.

The Disputes clause contained in FAR 52.233-1 shall be used with its Alternate I in all OPM solicitations and contracts.

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(Parts 1800 to 1899)

EDITORIAL NOTE: 1. Nomenclature changes to chapter 18 appear at 58 FR 51136, Sept. 30, 1993 and 67 FR 30602, May 7, 2002.

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SUBCHAPTER A—GENERAL

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

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1801.000 Scope of part.

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority.

1801.104 Applicability.

1801.105 Issuance.

1801.105-1 Publication and code arrangement.

1801.105-2 Arrangement of regulations.

1801.106 OMB approval under the Paperwork Reduction Act.

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

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

1801.000 Scope of part.

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

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority. (NASA supplements paragraph (a))

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

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

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

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

1801.104 Applicability.

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

1801.105 Issuance.

1801.105-1 Publication and code arrangement.

(b)(i) The NFS is an integrated document that contains both acquisition regulations that require public comment and internal Agency guidance and procedures that do not require public comment. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

(ii) NFS regulations that require public comment are issued as chapter 18 of title 48, CFR.

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

[69 FR 21762, Apr. 22, 2004]

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

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

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

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

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

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

NFS Segment	OMB Control No.
1804.470	2700-0098
1804.74	2700-0097
1819	2700-0073
1819.72	2700-0078
1823.271	2700-0106
1827	2700-0052
1831	2700-0080
1843	2700-0054
1843.71	2700-0094
NF 533	2700-0003
NF 1018	2700-0017

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

[61 FR 40534, Aug. 5, 1996, as amended at 63 FR 9953, Feb. 27, 1998; 65 FR 46627, July 31, 2000; 68 FR 43333, July 22, 2003]

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.

1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

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

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

1802.000 Scope of part.

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

Subpart 1802.1—Definitions

1802.101 Definitions.

Administrator means the Administrator or Deputy Administrator of NASA.

Contracting activity in NASA includes the NASA Headquarters installation, the NASA Shared Services Center, and the following field installations: Ames Research Center, Dryden Flight Research Center, Glenn Research Center at Lewis Field, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Marshall Space Flight Center and Stennis Space Center. A major program that may have contracts at multiple field centers may also be considered a “contracting activity.”

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

Head of the contracting activity (HCA) means, for field installations, the Director or other head, and for NASA Headquarters, the Director for Headquarters Operations. For Space Operations Mission Directorate (SOMD) contracts, the HCA is the Associate Administrator for SOMD in lieu of the field Center Director(s). For Exploration Systems Mission Directorate (ESMD) contracts, the HCA is the Associate Administrator for ESMD in lieu of the field Center Director(s). For NASA Shared Services Center (NSSC) contracts, the HCA is the Executive Director of the NSSC in lieu of the field Center Director(s).

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

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

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

[61 FR 40537, Aug. 5, 1996, as amended at 63 FR 9953, Feb. 27, 1998; 64 FR 19926, Apr. 23, 1999; 68 FR 23423, May 2, 2003; 70 FR 52941, Sept. 6, 2005; 71 FR 7873, Feb. 15, 2006; 71 FR 71073, Dec. 8, 2006]

National Aeronautics and Space Administration

1804.404-70

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1803.1—Safeguards

Subpart 1804.1—Contract Executive

Sec.

Sec.

1803.104 Procurement integrity.

1804.170 Contract effective date.

1803.104-1 Definitions.

Subpart 1804.4—Safeguarding Classified Information Within Industry

Subpart 1803.70—IG Hotline Posters

1804.404-70 Contract clause.

1803.7000 Policy.

1804.470 Security requirements for unclassified information technology (IT) resources.

1803.7001 Contract clause.

1804.470-1 Scope.

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

1804.470-2 Policy.

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

1804.470-3 IT security requirements.

1804.470-4 Contract clauses.

Subpart 1803.1—Safeguards

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

1803.104 Procurement integrity.

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

1803.104-1 Definitions.

Subpart 1804.1—Contract Execution

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

1804.170 Contract effective date.

[62 FR 36704, July 9, 1997. Redesignated at 67 FR 30603, May 7, 2002]

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

Subpart 1803.70—IG Hotline Posters

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

1803.7000 Policy.

NASA requires contractors to display NASA hotline posters prepared by the NASA Office of Inspector General on those contracts specified in 1803.7001, so that employees of the contractor having knowledge of waste, fraud, or abuse, can readily identify a means to contact NASA's IG.

Subpart 1804.4—Safeguarding Classified Information Within Industry

[66 FR 29727, June 1, 2001]

1803.7001 Contract clause.

1804.404-70 Contract clause.

Contracting officers must insert the clause at 1852.203-70, Display of Inspector General Hotline Posters, in solicitations and contracts expected to exceed \$5,000,000 and performed at contractor facilities in the United States.

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

[66 FR 29727, June 1, 2001]

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1804.470 Security requirements for unclassified information technology (IT) resources.

1804.470–1 Scope.

This section implements NASA's acquisition requirements pertaining to Federal policies for the security of unclassified information and information systems. Federal policies include the Federal Information System Management Act (FISMA) of 2002, Homeland Security Presidential Directive (HSPD) 12, Clinger-Cohen Act of 1996 (40 U.S.C. 1401 *et seq.*), OMB Circular A-130, Management of Federal Information Resources, and the National Institute of Standards and Technology (NIST) security requirements and standards. These requirements safeguard IT services provided to NASA such as the management, operation, maintenance, development, and administration of hardware, software, firmware, computer systems, networks, and telecommunications systems.

[72 FR 26561, May 10, 2007]

1804.470–2 Policy.

NASA IT security policies and procedures for unclassified information and IT are prescribed in NASA Policy Directive (NPD) 2810, Security of Information Technology; NASA Procedural Requirements (NPR) 2810, Security of Information Technology; and interim policy updates in the form of NASA Information Technology Requirements (NITR). IT services must be performed in accordance with these policies and procedures.

[72 FR 26561, May 10, 2007]

1804.470–3 IT security requirements.

These IT security requirements cover all NASA contracts in which IT plays a role in the provisioning of services or products (e.g., research and development, engineering, manufacturing, IT outsourcing, human resources, and finance) that support NASA in meeting its institutional and mission objectives. These requirements are applica-

ble where a contractor or subcontractor must obtain physical or electronic (i.e., authentication level 2 and above as defined in NIST Special Publication 800–63, Electronic Authentication Guideline) access to NASA's computer systems, networks, or IT infrastructure. These requirements are also applicable in cases where information categorized as low, moderate, or high by the Federal Information Processing Standards (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, is stored, generated, processed, or exchanged by NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

[72 FR 26561, May 10, 2007]

1804.470–4 Contract clause.

(a) Insert the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in all solicitations and contracts when contract performance requires contractors to—

(1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, process, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

(b) Paragraph (d) of the clause allows contracting officers to waive the requirements of paragraphs (b) and (c)(1) through (3) of the clause. Contracting officers must obtain the approval of the—

(1) Center IT Security Manager before granting any waivers to paragraph (b) of the clause; and

(2) The Center Chief of Security before granting any waivers to paragraphs (c)(1) through (3) of the clause.

[72 FR 26561, May 10, 2007]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.3—Synopsis of Contract Awards

Sec.

1805.303 Announcement of contract awards.

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

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

Subpart 1805.3—Synopsis of Contract Awards

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

(a)(i) In lieu of the \$3.5 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of \$5 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

[61 FR 40543, Aug. 5, 1996, as amended at 69 FR 21762, Apr. 22, 2004; 70 FR 56857, Sept. 29, 2005; 71 FR 71073, Dec. 8, 2006]

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

Sec.

1806.202 Establishing or maintaining alternative sources.

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

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

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

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

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

[61 FR 40545, Aug. 5, 1996, as amended at 69 FR 21762, Apr. 22, 2004]

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.

1807.107 Additional requirements for acquisitions involving bundling.

1807.107-170 Orders against Federal Supply Schedule contracts or other indefinite-delivery contracts awarded by another agency.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Policy.

1807.7201 Definitions.

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

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

Subpart 1807.1—Acquisition Plans

1807.107 Additional requirements for acquisitions involving bundling.

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

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

1807.107-70

time to allow a minimum of 10 days for review.

[65 FR 46876, Aug. 1, 2000]

1807.107-70 Orders against Federal Supply Schedule contracts or other indefinite-delivery contracts awarded by another agency.

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

[69 FR 21763, Apr. 22, 2004]

Subpart 1807.72—Acquisition Forecasting

1807.7200 Policy.

(a) As required by the Business Opportunity Development Reform Act of 1988, it is NASA policy to—

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

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

(3) Make available such forecasts to the public.

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

[69 FR 21763, Apr. 22, 2004]

1807.7201 Definitions.

Class of contracts means a grouping of acquisitions, either by dollar value or by the nature of supplies and services to be acquired.

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

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PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.8—Acquisition of Printing and Related Supplies

Sec.

1808.870 Contract clause.

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

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

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.870 Contract clause.

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

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

Sec.

1809.104-4 Subcontractor responsibility.

Subpart 1809.2—Qualifications Requirements

1809.206 Acquisitions subject to qualification requirements.

1809.206-1 General.

1809.206-70 Small businesses.

1809.206-71 Contract clause.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.505-4 Obtaining access to sensitive information.

1809.507 Solicitation provisions and contract clause.

1809.507-2 Contract clause.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

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

National Aeronautics and Space Administration

1809.505-4

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

Subpart 1809.1—Responsible Prospective Contractors

1809.104-4 Subcontractor responsibility.

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

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

Subpart 1809.2—Qualification requirements

1809.206 Acquisitions subject to qualification requirements.

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

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

[61 FR 47075, Sept. 6, 1996, as amended at 69 FR 21763, Apr. 22, 2004]

1809.206-70 Small businesses.

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

1809.206-71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209-70, Product Removal from Qualified Products List,

in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

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

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.505-4 Obtaining access to sensitive information.

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505-4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or sensitive (see 1837.203-70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, inter-related third party agreements to protect sensitive information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203-70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of their sensitive information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

[70 FR 35554, June 21, 2005]

1809.507

1809.507 Solicitation provisions and contract clause.

1809.507-2 Contract clause.

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

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

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

PART 1811—DESCRIBING AGENCY NEEDS

Sec.

Subpart 1811.4—Delivery or Performance Schedules

1811.404-70 NASA contract clauses.

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

Subpart 1811.4—Delivery or Performance Schedules

1811.404-70 NASA contract clauses.

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

[65 FR 37062, June 13, 2000]

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PART 1812—ACQUISITION OF COMMERCIAL ITEMS

Sec.

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

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

Subpart 1812.70—Commercial Space Hardware or Services

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

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

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

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

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

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

(A) 1852.214-71, Grouping for Aggregate Award.

(B) 1852.214-72, Full Quantities.

(C) 1852.215-84, Ombudsman.

(D) 1852.219-75, Small Business Subcontracting Reporting.

(E) 1852.219-76, NASA 8 Percent Goal.

(F) 1852.223-70, Safety and Health.

(G) 1852.223-71, Frequency Authorization.

(H) 1852.223-72, Safety and Health (Short Form).

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

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

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

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

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

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

[64 FR 19926, Apr. 23, 1999, as amended at 64 FR 51078, Sept. 21, 1999; 65 FR 37058, June 13, 2000; 65 FR 50153, Aug. 17, 2000; 66 FR 18052, Apr. 5, 2001; 69 FR 26776, May 14, 2004]

Subpart 1812.70—Commercial Space Hardware or Services

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

Public Law 102-139, title III, Section 2459d, prohibits NASA from awarding a

contract with an expected duration of more than one year if the primary effect of the contract is to provide a guaranteed customer base for, or establish an anchor tenancy in, new commercial space hardware or services. Exception to this prohibition may be authorized only by an appropriations Act specifically providing otherwise.

[63 FR 40189, July 28, 1998]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

1813.000 Scope of part.

1813.003 Policy.

Subpart 1813.3 Simplified Acquisition Methods

1813.302-570 NASA solicitation provisions.

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

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

1813.000 Scope of part.

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

[65 FR 46628, July 31, 2000]

1813.003 Policy. (NASA supplements paragraph (g))

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

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

Subpart 1813.3—Simplified Acquisition Methods

1813.302-570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213-70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items. This provision shall not be used for acquisition of commercial items as defined in FAR 2.101.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer.

(i) Use the provision with its Alternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4).

(ii) Use the provision with its Alternate II in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3).

(iii) Use the provision with its Alternate III in solicitation which include the clause at FAR 52.227-14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213-71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when a trade-off source selection process will be used, that is, factors in addition to technical acceptability and price will be considered. (See FAR 13.106.)

[67 FR 38904, June 6, 2002, as amended at 67 FR 50823, Aug. 6, 2002]

PART 1814—SEALED BIDDING**Subpart 1814.2—Solicitation of Bids**

Sec.

1814.201-6 Solicitation provisions.

1814.201-670 NASA solicitation provisions.

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

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

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

Subpart 1814.2—Solicitation of Bids**1814.201-6 Solicitation provisions.****1814.201-670 NASA solicitation provisions.**

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

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

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

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

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

Subpart 1814.3—Submission of Bids**1814.302 Bid submission. (NASA supplements paragraph (b))**

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

PART 1815—CONTRACTING BY NEGOTIATION**Subpart 1815.2—Solicitation and Receipt of Proposals and Information**

Sec.

1815.203-72 Risk Management.

1815.207 Handling proposals and information.

1815.207-70 Release of proposal information.

1815.207-71 Appointing non-Government evaluators as special Government employees.

1815.208 Submission, modification, revision, and withdrawal of proposals.

1815.209 Solicitation provisions and contract clauses.

1815.209-70 NASA solicitation provisions.

Subpart 1815.3—Source Selection

1815.305-70 Identification of unacceptable proposals.

1815.306 Exchanges with offerors after receipt of proposals.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403-170 Waivers of cost or pricing data.

1815.404-471 NASA structured approach for profit or fee objective.

1815.404-472 Payment of profit or fee under letter contracts.

1815.407 Special cost or pricing areas.

1815.407-2 Make-or-buy programs.

1815.408 Solicitation provisions and contract clauses.

1815.408-70 NASA solicitation provisions and contract clauses.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy.

1815.604 Agency points of contact.

1815.606 Agency procedures.

1815.606-70 Relationship of unsolicited proposals to NRAs.

1815.609 Limited use of data.

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1815.609-70 Limited use of proposals.
1815.670 Foreign proposals.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7003 Contract clause.

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

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

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.203-72 Risk management.

In all RFPs and RFOs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

[65 FR 70316, Nov. 22, 2000]

1815.207 Handling proposals and information.

1815.207-70 Release of proposal information.

(a) NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(b)(1) Except as provided in paragraph (b)(2) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. If outside evaluators are involved, this authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(2) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for

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the overall conduct of the evaluation. If outside evaluators are involved, the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(i) Proposals submitted in response to broad agency announcements such as Announcements of Opportunity and NASA Research Announcements;

(ii) Unsolicited proposals; and

(iii) SBIR and STTR proposals.

(3) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (b)(1) and (b)(2) of this section.

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

1815.207-71 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government evaluators, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a special Government employee is a separate action from the approval required by paragraph 1815.207-70(b) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The installation personnel office when the release of proposal information is to be made by the installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) Proposals submitted in response to broad agency announcements such as Announcements of Opportunity and NASA Research Announcements;

(2) Unsolicited proposals; and

(3) SBIR and STTR proposals.

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

1815.208 Submission, modification, revision, and withdrawal of proposals. (NASA supplements paragraph (b))

(b) The FAR late proposal criteria do not apply to Announcements of Opportunity, NASA Research Announcements, and Small Business Innovative Research (SBIR) Phase I and Phase II solicitations, and Small Business Technology Transfer (STTR) solicitations. For these solicitations, proposals or proposal modifications received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the late submission, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering it. The selection official or a designee shall determine whether to consider the late submission.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

1815.209 Solicitation provisions and contract clauses. (NASA supplements paragraph (a))

(a) The contracting officer shall insert FAR 52.215-1 in all competitive negotiated solicitations.

1815.209-70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215-77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a preproposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(b) When it is not in the Government's best interest to make award for less than the specified quantities solicited for certain items or groupings of items, the contracting officer shall insert the provision at 1852.214-71, Grouping for Aggregate Award. See 1814.201-670(b).

(c) When award will be made only on the full quantities solicited, the contracting officer shall insert the provision at 1852.214-72, Full Quantities. See 1814.201-670(c).

(d) The contracting officer shall insert the provision at 1852.215-81, Proposal Page Limitations, in all competitive requests for proposals.

[63 FR 9954, Feb. 27, 1998, as amended at 67 FR 50824, Aug. 6, 2002]

Subpart 1815.3—Source Selection**1815.305-70 Identification of unacceptable proposals.**

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major efficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

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

1815.306 Exchanges with offerors after receipt of proposals. (NASA supplements paragraphs (c), (d), and (e))

(c)(2) A total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

(e)(1) In no case shall the contacting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other

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offerors an opportunity to propose against the relaxed requirements.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998; 69 FR 21764, Apr. 22, 2004]

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403-170 Waivers of cost or pricing data.

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

[64 FR 10573, Mar. 5, 1999]

1815.404-471 NASA structured approach for profit or fee objective.

1815.404-472 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

[65 FR 12485, Mar. 9, 2000]

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1815.407 Special cost or pricing areas.

1815.407-2 Make-or-buy programs. (NASA supplements paragraph (e))

(e)(1) Make-or-buy programs should not include items or work efforts estimated to cost less than \$500,000.

1815.408 Solicitation provisions and contract clauses.

1815.408-70 NASA solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 1852.215-78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.407-2(c). This provision shall be used in conjunction with the clause at FAR 52.215-9, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures for

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approval and issuance of letter contracts shall be followed.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy. (NASA paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPR 5800.1) applies.

(2) Renewal proposals (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 63459, Nov. 2, 2004]

1815.604 Agency points of contact. (NASA supplements paragraph (a))

(a)(6) Information titled “Guidance for the Preparation and Submission of Unsolicited Proposals” is available on the Internet at <http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html>. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44409, Aug. 19, 1998; 66 FR 53546, Oct. 23, 2001; 69 FR 21764, Apr. 22, 2004]

1815.606 Agency procedures. (NASA supplements paragraphs (a) and (b))

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror’s express consent.

[63 FR 9954, Feb. 27, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

1815.606-70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016-71), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

[63 FR 9954, Feb. 27, 1998, as amended at 64 FR 48561, Sept. 7, 1999]

1815.609 Limited use of data.

1815.609-70 Limited use of proposals.

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207-70.

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.

[64 FR 36606, July 7, 1999]

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA’s implementation of an ombudsman program is in NPR 5101.33, Procurement Advocacy Programs.

[63 FR 9954, Feb. 27, 1998, as amended at 65 FR 58931, Oct. 3, 2000; 69 FR 63459, Nov. 2, 2004]

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215-84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.

[65 FR 38777, June 22, 2000]

PART 1816—TYPES OF CONTRACTS**Subpart 1816.3—Cost-Reimbursement Contracts**

Sec.

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.
1816.202-70 NASA contract clause.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303-70 Cost-sharing contracts.
1816.307 Contract clauses.
1816.307-70 NASA contract clauses.

Subpart 1816.4—Incentive Contracts

1816.402 Application of predetermined, formula-type incentives. (NASA paragraphs 1, 2 and 3).
1816.402-2 Performance incentives.
1816.402-270 NASA technical performance incentives.
1816.404 Fixed-price contracts with award fees.
1816.405 Cost-reimbursement incentive contracts.
1816.405-2 Cost-plus-award-fee (CPAF) contracts.
1816.405-270 CPAF contracts.
1816.405-271 Base fee.
1816.405-272 Award fee evaluation periods.
1816.405-273 Award fee evaluations.
1816.405-274 Award fee evaluation factors.
1816.405-275 Award fee evaluation scoring.
1816.405-276 Award fee payments and limitations.
1816.406 Contract clauses.
1816.406-70 NASA contract clauses.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506-70 NASA contract clause.

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

SOURCE: 62 FR 3478, Jan. 23, 1997, unless otherwise noted.

Subpart 1816.2—Fixed-Price Contracts**1816.202 Firm-fixed-price contracts.****1816.202-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.216-78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.303-70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government

under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a)(1) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records—Negotiation.

(g)(1) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216-13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records—Negotiation.

[62 FR 3478, Jan. 23, 1997, as amended at 69 FR 21764, Apr. 22, 2004]

1816.307-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216-73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303-70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216-81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216-87, Submission of Vouchers for

Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216-7, Allowable Cost and Payment, or FAR clause 52.216-13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216-89, Assignment and Release Forms.

Subpart 1816.4—Incentive Contracts

1816.402 Application of predetermined, formula-type incentives. (NASA paragraphs 1, 2 and 3).

When considering the use of a quality, performance, or schedule incentive, the following guidance applies:

(1) A positive incentive is generally not appropriate unless—

(i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;

(ii) The value of the higher level of performance is worth the additional cost/fee;

(iii) The attainment of the higher level of performance is clearly within the control of the contractor; and

(iv) An upper limit is identified, beyond which no further incentive is earned.

(2) A negative incentive is generally not appropriate unless—

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

[63 FR 12997, Mar. 17, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

1816.402-2 Performance incentives.**1816.402-270 NASA technical performance incentives.**

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than \$25 million. Any exception to this requirement shall be approved in writing by the head of contracting activity. Performance incentives may be included in hardware contracts valued under \$25 million acquired under procedures other than FAR Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incen-

tive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g. multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules:

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404-4(c)(4)(i).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may

be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

[62 FR 3478, Jan. 23, 1997, as amended at 62 FR 58687, Oct. 30, 1997; 63 FR 9965, Feb. 27, 1998; 63 FR 12997, Mar. 17, 1998; 63 FR 28285, May 22, 1998; 68 FR 23424, May 2, 2003; 69 FR 21764, Apr. 22, 2004]

1816.404 Fixed-price contracts with award fees.

Section 1816.405-2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405-271) nor evaluation of cost control (see 1816.405-274) apply to FPAF contracts.

[62 FR 58687, Oct. 30, 1997]

1816.405 Cost-reimbursement incentive contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405-2 Cost-plus-award-fee (CPAF) contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405-270 CPAF contracts.

(a) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate

choice, including evidence that any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits (see FAR 16.405-2(b)(1)(iii)). Award fee incentives should not be used on contracts with a total estimated cost and fee less than \$2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

[63 FR 12998, Mar. 17, 1998, as amended at 72 FR 35666, June 29, 2007]

1816.405-271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.405-273 and 1816.405-275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final

1816.405-272

award fee evaluation is “poor/unsatisfactory”, all provisional base fee payments shall be refunded to the Government.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, July 9, 1997; 63 FR 13133, Mar. 18, 1998]

1816.405-272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997, as amended at 63 FR 13133, Mar. 18, 1998]

1816.405-273 Award fee evaluations.

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or “rolled-over,” into subsequent periods.

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(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor’s total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government’s assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405-276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as “Source Selection Information—See FAR 3.104”.

[63 FR 13133, Mar. 18, 1998]

1816.405-274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period. Factors should be tied to desired outcomes. If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors. Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25

percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor, if used, must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405-273(a), an overall fee determination of zero for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405-273(b), an overall fee determination of zero for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if a zero fee determination was made because of a major breach of safety or security.

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations, but must be directly related to the work on the contract. A major breach of security is an act or omission by the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(4) The Assistant Administrator for Procurement (Code HS) shall be notified prior to the determination of a zero award fee because of a major breach of safety or security.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its

control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater (see 1816.405-275). An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.405-274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns.

(2) The contractor's performance against the contract target for participation as subcontractors by small disadvantaged business concerns in the NAICS Major Groups designated by the Department of Commerce (see FAR 19.201(c)) shall also be evaluated if the clause at FAR 52.219-26, Small Disadvantaged Business Participation—Incentive Subcontracting, is not included in the contract (see FAR 19.1204(c)).

(3) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(4) The evaluation weight given to the contractor's performance against

the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns, and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

(i) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(j) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 63 FR 12998, Mar. 17, 1998; 64 FR 25215, May 11, 1999; 65 FR 37059, June 13, 2000; 65 FR 46628, July 31, 2000; 65 FR 58932, Oct. 3, 2000; 65 FR 70316, Nov. 22, 2000; 66 FR 53547, Oct. 23, 2001; 67 FR 7618, Feb. 20, 2002; 72 FR 35667, June 29, 2007]

1816.405-275 Award fee evaluation scoring.

(a) A scoring system of 0-100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) *Excellent* (100-91): Of exceptional merit; exemplary performance in a

timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) *Very good* (90-81): Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) *Good* (80-71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) *Satisfactory* (70-61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) *Poor/Unsatisfactory* (less than 61): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated "Excellent," the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0-100 according to the ratings defined in 1816.405-275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 63 FR 13134, Mar. 18, 1998]

1816.405-276 Award fee payments and limitations.

(a) *Interim award fee payments.* The amount of an interim award fee payment (see 1816.405-273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional award fee payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

[63 FR 13134, Mar. 18, 1998]

1816.406 Contract clauses.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.406-70 NASA contract clauses.

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract

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is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in cost an award fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, the contracting officer shall insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 62 FR 58687, Oct. 30, 1997; 63 FR 13134, Mar. 18, 1998]

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506-70 NASA contract clause.

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is con-

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templated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NPR 9501.2, NASA Contractor Financial Management Reporting System), use the clause with its Alternate I.

[62 FR 3478, Jan. 23, 1997, as amended at 64 FR 51079, Sept. 21, 1999; 69 FR 63459, Nov. 2, 2004]

PART 1817—SPECIAL CONTRACTING METHODS

Sec.

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1817.204 Contracts.

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1817.7101 Policy.

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1817.7300 Definitions.

1817.7302 Contract clauses.

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

SOURCE: 61 FR 55753, Oct. 29, 1996, unless otherwise noted.

Subpart 1817.2—Options

1817.200 Scope of subpart.

FAR subpart 17.2 applies to all NASA contracts.

1817.204 Contracts.

(e)(i) The 5-year limitation (basic plus option periods) applies to all NASA contracts regardless of type and other procurement award instruments. This includes agreements (e.g. basic ordering agreements, blanket purchase agreements), interagency acquisitions, and orders placed under agreements or awarded under a Federal Supply Schedule or other indefinite delivery/indefinite quantity contracts awarded by other agencies.

(iii) Requests for deviations from the 5-year limitation policy shall be sent to the Assistant Administrator for Procurement (Code HS) and shall include justification for exceeding five years.

The justification shall discuss planned future assessment of continued performance either prior to exercise of options or at the mid-term of a basic contract with no options. Evidence shall also be included showing that the extended years can be reasonably priced.

[69 FR 9964, Mar. 3, 2004, as amended at 69 FR 21764, Apr. 22, 2004]

1817.208 Solicitation provisions and contract clauses. (NASA supplements paragraph (c))

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217-5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C.481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from the sale to the acquisition of similar property for replacement purposes. The transactions must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NPR 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101-46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

[61 FR 55753, Oct. 29, 1996, as amended at 65 FR 58932, Oct. 3, 2000; 69 FR 63459, Nov. 2, 2004]

Subpart 1817.73—Phased Acquisition

1817.7300 Definitions.

(a) *Down-selection.* In a phased acquisition, the process of selecting contrac-

tors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition.* An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) *Progressive Competition.* A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7302 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.217-71, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.217-72, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

[63 FR 56091, Oct. 21, 1998, as amended at 69 FR 21764, Apr. 22, 2004]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1819—SMALL BUSINESS PROGRAMS

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Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

1819.7301 Scope of subpart.

1819.7302 NASA contract clauses.

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

SOURCE: 62 FR 36707, July 9, 1997, unless otherwise noted.

1819.001 Definitions.

High-Tech as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

Subpart 1819.2—Policies

1819.201 General policy. (NASA supplements paragraphs (a), (c), (d), and (f))

(a)(i) NASA is committed to providing to small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) NASA annually negotiates Agency small, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15

National Aeronautics and Space Administration

1819.1005

U.S.C. 644). In addition, NASA has the following statutory goals based on the total value of prime and subcontract awards:

(A) Under Public Laws 101-144, 101-507, and 102-389, an annual goal of at least 8 percent for prime and subcontract awards to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small businesses (WOSBs) (see 1819.7000); and

(B) Under 10 U.S.C. 2323, an annual goal of 5 percent for prime and subcontract awards to SDBs, HBCUs, and WOSBs.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999; 65 FR 38777, June 22, 2000; 65 FR 58932, Oct. 3, 2000; 67 FR 53947, Oct. 23, 2001; 69 FR 21765, Apr. 22, 2004]

1819.302 Protesting a small business representation. (NASA supplements paragraph (d))

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

Subpart 1819.7—The Small Business Subcontracting Program

1819.708 Contract clauses. (NASA supplements paragraph (b))

(b)(1) The contracting officer shall use the clause at FAR 52.219-9 with its

Alternate II when contracting by negotiation.

1819.708-70 NASA solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1852.219-73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219-9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.21975, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219-9, except for contracts covered by an approved commercial plan.

[64 FR 25215, May 11, 1999]

Subpart 1819.10—Small Business Competitiveness Demonstration Program

1819.1005 Applicability.

(b) The targeted industry categories for NASA and their North American Industry Classification System (NAICS) codes are:

NAICS code	Industry category
334111	Electronic Computer Manufacturing.
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing.
334613	Magnetic and Optical Recording Media Manufacturing.
334119	Other Computer Peripheral Equipment Manufacturing.
33422	Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing.
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing.
333314	Optical Instrument and Lens Manufacturing.
541511	Custom Computer Programming Services.
541512	Computer Systems Design Services.
51421	Data Processing Services.
541519	Other Computer Related Services.

[65 FR 58932, Oct. 3, 2000, as amended at 67 FR 50824, Aug. 6, 2002]

1819.7003

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Subpart 1819.70—NASA 8 Percent Goal

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7003 Contract clause.

The contracting officer shall insert the clause at 1852.219-76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

1819.7201 Scope of subpart.

The NASA Mentor-Protégé Program is designed to incentivize NASA prime contractors to assist small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small business (WOSB) concerns, in enhancing their capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

Subpart 1819.71—NASA Rural Area Small Business Plan

[64 FR 10571, Mar. 5, 1999]

1819.7101 Definition.

Rural area means a county with a population of fewer than twenty thousand individuals.

1819.7202 Definitions.

High-Tech is defined in 1819.001.

1819.7102 General.

Pursuant to Public Law 100-590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

1819.7203 Non-affiliation.

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the Program. In addition, NASA shall not consider partial ownership, up to 10 percent, of a Department of Defense (DOD)-sanctioned protégé firm by its DOD mentor to constitute affiliation.

1819.7103 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.219-74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed \$550,000 (\$1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protégé program to NASA contractors.

(a) In accordance with the benefits authorized by the DOD Mentor-Protégé Program (Public Law 101-510, Section 831, as amended by Public Law 102-190, Section 814), a NASA contractor who is also an approved DOD mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the protégés which they are assisting under the DOD Program (Public Law 101-510, Section 831(f)(2)).

[62 FR 36707, July 9, 1997, as amended at 71 FR 71073, Dec. 8, 2006]

(c) NASA prime contractors may count the costs of developmental assistance provided of protégés being assisted under the DOD Program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102-190, Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and minority institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features from the DOD Mentor-Protégé Program to NASA prime contractors. NASA mentors will be held to show "good faith" by providing actual developmental assistance beyond transferring credit from activity in the DOD Program to NASA subcontracting plans.

1819.7205 General policy.

(a) Eligible large business prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", who have at least one active subcontracting plan, and who are approved as mentor firms may enter into agreements with eligible entities (as defined in 1819.7209) as protégés to provide appropriate developmental assistance to enhance the capabilities of protégés to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", and that are capable of providing

developmental assistance to protégés, may also be approved as mentors. An active mentor-protégé arrangement requires the protégé to be a subcontractor under the mentor's prime contract with NASA.

(b) The Mentor-Protégé program may be used in cost reimbursement type contracts and contracts that include an award fee incentive. Costs incurred by a mentor to provide the developmental assistance described in 1819.7214 are allowable. Except for cost-plus-award-fee contracts, such proposed costs shall not be included in the cost base used to develop a fee objective or to negotiate fee. On contracts with an award fee incentive, a contractor's Mentor-Protégé efforts shall be evaluated under the award fee evaluations.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10571, Mar. 5, 1999]

1819.7206 Incentives for prime contractor participation.

(a) Proposed mentor-protégé efforts, except for the extent of participation of protégés as subcontractors, shall be evaluated under the Mission Suitability factor. The participation of SDB protégés as subcontractors shall be evaluated separately as a Mission Suitability subfactor (see FAR 15.304(c)(4) and 19.1202). The participation of other categories of protégés as subcontractors may be evaluated separately as part of the evaluation of proposed subcontracted efforts.

(b) Under contracts with award fee incentives, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. For purposes of earning award fee, the mentor firm's performance shall be evaluated against the criteria described in the clause at 1852.219-79, Mentor Requirements and Evaluation. This award fee evaluation shall not include assessment of the contractor's achievement of FAR 52.219-9 subcontracting plan SDB goals or proposed monetary targets for SDB subcontracting (see FAR 19.1203).

[64 FR 10571, Mar. 5, 1999, as amended at 65 FR 30013, May 10, 2000; 65 FR 46628, July 31, 2000]

1819.7207 Measurement of Program success.

The overall success of the NASA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontractors awarded to protégés by mentor firms under NASA contracts since the date of entry into the Program;

(b) An increase in the number and dollar value of contract and sub-contract awards to protégé firms since the time of their entry into the Program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protégé firm by its mentor firm; and

(d) An increase in subcontracting with protégé firms in industry categories where they have not traditionally participating within the mentor firm's activity.

1819.7208 Mentor firms.

(a) Eligibility:

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by FAR 19.7; and

(3) Small business prime contractors that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors and suppliers.

(b) Mentors will be encouraged to identify and select as protégés:

(1) A broad base of firms including those defined as emerging firms (e.g., a protégé whose size is no greater than 50 percent of the size standard applicable to the NAICS code assigned to a contracting opportunity);

(2) Firms in addition to those with whom they have established business relationships; and

(3) High-tech firms.

[62 FR 36707, July 9, 1997, as amended at 65 FR 58932, Oct. 3, 2000]

1819.7209 Protégé firms.

(a) For selection as a protégé, a firm must be:

(1) An SDB in the NAICS Major Groups as determined by the Department of Commerce (see FAR 19.201(b)), HBCU, MI, or WOSB;

(2) Certified as small in the NAICS code for the services or suppliers to be provided by the protégé under its sub-contract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) Except for SDBs, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to the NASA Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10571, Mar. 5, 1999; 65 FR 58932, Oct. 3, 2000]

1819.7210 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protégé.

(c) The selection of protégé firms by mentor firms may not be protested, except for a protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé. Such protests shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) (Code K) of the protest.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7211 Application process for mentor firms to participate in the Program.

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the Program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of the NASA field center where support is provided;

(3) The number of proposed mentor-protégé arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar value of subcontracts awarded under NASA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities defined as protégés.

(6) Information on the proposed types of developmental assistance. For each proposed mentor-protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protégé agreement under the NASA Program, that they intend to cooperate in the establishment of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in 1819.7215 and all other provisions governing the Program.

1819.7212 OSDBU review and approval process of agreement.

(a) The information specified in 1819.7211(b) is reviewed by the NASA OSDBU. This review will be completed no later than 30 days after receipt by the OSDBU. The OSDBU will provide a copy of the submitted information to the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates an agreement with the protégé; and

(2) Submits an original and two (2) copies of the agreement to the OSDBU for approval by the NASA Mentor-protégé program manager, the NASA technical program manager, and the contracting officer.

(c) Upon agreement approval, the mentor may implement a developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

1819.7213 Agreement contents.

The contents of the agreement must contain:

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(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSDBU, and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protégé;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, to include a description of the subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégé developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protégé firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

1819.7214 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to—

(1) Financial management,

(2) Organizational management,

(3) Overall business management/planning, and

(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of subcontracts under NASA contracts;

(d) Progress payments based on costs. The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

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(e) Advance payments. While a mentor can make advance payments to its protégés who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if advance payments have been authorized in accordance with 1832.409–170;

(f) Loans;

(g) Rent-free use of facilities and/or equipment; and

(h) Temporary assignment of personnel to the protégé for purpose of training.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7215 Obligation.

(a) The mentor or protégé may voluntarily withdraw from the Program as mutually agreed by both mentor and protégé.

(b) Mentor and protégé firms will submit a “lessons learned” evaluation to the NASA OSDBU at the conclusion of each NASA contract subject to the approved Mentor-Protégé agreement.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7216 Internal controls.

(a) The NASA OSDBU will manage the Program. Internal controls will be established by the OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing any semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where mentor-protégé activity is occurring.

(b) NASA may terminate mentor-protégé agreements for good cause and exclude mentor or protégé firms from participating in the NASA program. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date.

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Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h).

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7217 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protégé program manager, the NASA OSDBU, to include information as outlined in 1852.219-79(b).

(b) Protégés are encouraged to submit semi-annual reports to the OSDBU on Program progress pertaining to their mentor-protégé agreement. However, costs associated with the preparation of these reports are unallowable costs under Government contracts and will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protégé Program in a quarterly 'Strengths and Weaknesses' evaluation report. A copy of this assessment will be provided to the OSDBU and the contracting officer.

(d) The NASA Mentor-Protégé program manager will submit semi-annual reports to the cognizant contracting officer regarding the participating prime contractor's performance in the Program for use in the award fee determination process.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1819.7218 Program review.

At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé, as appropriate, will formally brief the NASA OSDBU, the technical program manager, and the contracting officer regarding Program accomplishments pertaining to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219-77, NASA Mentor-Protégé Program, in:

(1) Cost reimbursement solicitations and contracts, or solicitations and contracts with award fee incentives, that include the clause at FAR 52.219-9, Small Business Subcontracting Plan;

(2) Small business set-asides of the contract types in (a)(1) of this section with values exceeding \$550,000 (\$1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the clause at 1852.219-79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999; 71 FR 71073, Dec. 8, 2006]

Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

1819.7301 Scope of subpart.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of the Small Business Act codified at 15 U.S.C. 631, as amended, and the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), codified with amendments at 15 U.S.C. 638. The Small Business Act requires that the Small Business Administration (SBA) issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51-percent

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owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by the SBA Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

[71 FR 61688, Oct. 19, 2006]

1819.7302 NASA contract clauses.

(a) Contracting officers shall insert the clause at 1852.219-80, Limitation on Subcontracting—SBIR Phase I Program, in all Phase I contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(b) Contracting officers shall insert the clause at 1852.219-81, Limitation on Subcontracting—SBIR Phase II Program, in all Phase II contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert the clause at 1852.219-82, Limitation on Subcontracting—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(d) Contracting officers shall insert the clause at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(e) Contracting officers shall insert the clause at 1852.219-84, Limitation of the Principal Investigator—STTR Pro-

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gram, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(f) Contracting officers shall insert the clause at 1852.219-85, Conditions for Final Payment—SBIR and STTR Contracts, in all contracts awarded under the Small Business Technology Transfer (STTR) Program and in all Phase I and Phase II contracts awarded under the Small Business Technology Transfer (STTR) Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

[71 FR 61688, Oct. 19, 2006]

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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

SOURCE: 61 FR 55755, Oct. 29, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1822 appear at 66 FR 53547, Oct. 23, 2001.

Subpart 1822.1—Basic Labor Policies

1822.103-5 Contract clause.

Insert the clause at 52.222-1, Notice to the Government of Labor Disputes, in all solicitations and contracts that exceed the simplified acquisition threshold.

[69 FR 21765, Apr. 22, 2004]

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORK-PLACE

Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

Sec. 1823.271 NASA Solicitation provision and contract clause.

National Aeronautics and Space Administration

1823.570-2

Subpart 1823.5—Drug-Free Workplace

- 1823.570 Drug- and alcohol-free workforce.
- 1823.570-1 Definitions.
- 1823.570-2 Contract clause.
- 1823.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 1823.10—Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

- 1823.1005 Contract clause.

Subpart 1823.70—Safety and Health

- 1823.7001 NASA solicitation provisions and contract clauses.

Subpart 1823.71—Frequency Authorization

- 1823.7101 Contract clause.

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

SOURCE: 61 FR 55757, Oct. 29, 1996, unless otherwise noted.

Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

1823.271 NASA Solicitation provision and contract clause.

Insert the clause at 1852.223-76, Federal Automotive Statistical Tool Reporting, in solicitations and contracts requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

[68 FR 43334, July 22, 2003]

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

This section sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

1823.570-1 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570-3 and the clause at 1852.223-74.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated "mission critical" pursuant to the clause at 1852.246-70. The term also includes any applicant who is interviewed for a position described in this paragraph.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a pre-employment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

1823.570-2 Contract clause.

The contracting officer shall insert the clause at 1852.223-74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts containing the clause at 1852.246-70, "Mission Critical Space Systems Personnel Reliability Program," and in other solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

[61 FR 55757, Oct. 29, 1996. Redesignated at 69 FR 21765, Apr. 22, 2004]

1823.570-3

1823.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223-74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223-74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

Subpart 1823.10—Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

1823.1005 Contract clause.

(b) Use the clause with its Alternate I if the contract provides for contractor (1) Operation or maintenance of a NASA facility at which NASA has implemented or plans to implement an EMS, including, but not limited to the Jet Propulsion Laboratory and Michoud Assembly Facility; or

(2) Activities and operations—

(ii) The contracting officer and the procurement request initiator shall determine whether the contractor's activities or operations are covered within the EMS, in cooperation with the facility's environmental office, and in accordance with NPR 8553.1, "NASA Environmental Management System (EMS)" paragraph 1.2.c, and the local EMS documented procedures.

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(c) Use the clause with its Alternate II whenever Alternate I is used.

[68 FR 62023, Oct. 31, 2003, as amended at 69 FR 63459, Nov. 2, 2004]

Subpart 1823.70—Safety and Health

1823.7001 NASA solicitation provisions and contract clauses.

(a) The clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the provision at 1852.223-70. This provision may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract. Insert

the provision with its Alternate I, in Invitations for Bid containing the clause at 1852.223-70.

(d)(1) The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health.

(2) Insert the clause with its Alternate I if—

(i) The solicitation or contract is with an educational or other nonprofit institution and contains the termination clause at FAR 52.249-5; or

(ii) The solicitation or contract is for commercial items and contains the clause at FAR 52.212-4.

(3) For contracts with estimated values below \$500,000, use of the clause is optional.

(e) For all solicitations and contracts exceeding the micro-purchase threshold that do not include the clause at 1852.223-70, Safety and Health, the contracting officer shall insert the clause at 1852.223-72, Safety and Health (Short Form).

[65 FR 37059, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18052, Apr. 5, 2001; 66 FR 48361, Sept. 20, 2001; 67 FR 17016, Apr. 9, 2002; 71 FR 8989, Feb. 22, 2006]

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

Sec.
1824.102 General.

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

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

(1) For NASA rules and regulations implementing the Privacy Act, see Privacy—NASA Regulations, (14 CFR 1212). The Act applies to any contractor maintaining a system of records to accomplish a NASA mission.

(2) Systems of records to which the Privacy Act does not apply include—

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

(A) Are maintained under contracts with educational institutions to provide training;

(B) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(C) Are similar to those maintained on other students; and

(D) Are commingled with their records on other students.

PART 1825—FOREIGN ACQUISITION

Sec.
1825.003 Definitions.
1825.003-70 NASA definitions.

Subpart 1825.1 Buy American Act—Supplies

1825.103 Exceptions.

Subpart 1825.4 Trade Agreements

1825.400 Scope of subpart.

Subpart 1825.9 Customs and Duties

1825.901 Policy.

Subpart 1825.11 Solicitation Provisions and Contract Clauses

1825.1101 Acquisition of supplies.
1825.1103 Other provisions and clauses.
1825.1103-70 Export control.

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

1825.003

SOURCE: 65 FR 10031, Feb. 25, 2000, unless otherwise noted.

1825.003 Definitions.

1825.003-70 NASA definitions.

“Canadian end product”, for an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.003 applies.

Subpart 1825.1—Buy American Act—Supplies

1825.103 Exceptions.

(a)(i) The Assistant Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.003-70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

(ii) The Assistant Administrator for Procurement has determined that for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

[65 FR 10031, Feb. 25, 2000, as amended at 68 FR 11748, Mar. 12, 2003; 69 FR 21765, Apr. 22, 2004]

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Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart.

(b) The Buy American Act applies to all acquisitions of Japanese end products or services in excess of \$3,000.

[65 FR 10031, Feb. 25, 2000, as amended at 67 FR 50824, Aug. 6, 2002; 71 FR 71073, Dec. 8, 2006]

Subpart 1825.9—Customs and Duties

1825.901 Policy.

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR part 1217.

Subpart 1825.11—Solicitation Provisions and Contract Clauses

1825.1101 Acquisition of supplies.

(c)(1) NASA has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

(e) The contracting officer must add paragraph (k) as set forth in 1852.225-8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR subpart 25.9 and 1825.903.

[65 FR 10031, Feb. 25, 2000, as amended at 68 FR 11748, Mar. 12, 2003]

1825.1103 Other provisions and clauses.

1825.1103-70 Export control.

(a) Background. (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15

CFR parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii))

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225-70, Alternate I, provides contractual authority for the exemption, but the exemption is avail-

able only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) Contract clause. Insert the clause at 1852.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Sec.

1827.000 Scope of part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.

1827.302 Policy.

1827.303 Contract clauses.

1827.303-70 NASA solicitation provisions and contract clauses.

1827.304 Procedures.

1827.304-1 General.

1827.304-2 Contracts placed by or for other Government agencies.

1827.304-3 Contracts for construction work or architect-engineer services.

1827.304-4 Subcontracts.

1827.304-5 Appeals.

1827.305 Administration of the patent rights clauses.

1827.305-4 Conveyance of invention rights acquired by the Government.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

1827.409 Solicitation provisions and contract clauses.

1827.409-70 NASA contract clause.

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

SOURCE: 62 FR 36715, July 9, 1997, unless otherwise noted.

1827.000 Scope of part.

This part prescribes NASA policies, procedures, and clauses pertaining to patents, data, and copyrights. The provisions of FAR Part 27 apply to NASA acquisitions unless specifically excepted in this part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.

Administrator, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

Contract, as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or sub-

contract 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.

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(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).

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(b)(1)(ii) FAR 52.227-12 is not used in NASA contracts. See instead 1827.303-70(b).

(c)(1)(ii) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, see 1827.303-70(f).

(2) See 1827.303-70 (b) and (f).

(d)(1) When one of the conditions in FAR 27.303(d)(1) (i) through (iv) is met, the contracting officer shall consult with the installation intellectual property counsel to determine the appropriate clause.

[62 FR 36715, July 9, 1997, as amended at 64 FR 36606, July 7, 1999]

1827.303-70 NASA solicitation provisions and contract clauses.

(a) When the clause at FAR 52.227-11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227-11.

(b) The contracting officer shall insert the clause at 1852.227-70, New Technology, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 305(a) of the Act), if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in paragraphs (b)(1) through (5) of this section.

(c) The contracting officer shall insert the provision at 1852.227-71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology (see paragraph (b) of this section).

(d) The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form) or 1852.227-70, New Technology (see paragraph (c) of this section). It may also be inserted, upon consultation with the installation intellectual property counsel, in solicitations and contracts using another patent rights clause. The New Technology Representative shall be the Technology Utilization Officer or the Staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the intellectual property counsel (by titled position) having cognizance of patent matters for the installation concerned.

(e) The contracting officer shall insert the provision at 1852.227-84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

(f) As authorized in FAR 27.303(c)(2), when work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227-85, Invention Reporting and Rights—Foreign, shall be used unless

the contracting officer determines, with concurrence of the installation intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227-13, Patent Rights—Acquisition by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304-4(a) regarding subcontracts with U.S. firms.)

[62 FR 36715, July 9, 1997, as amended at 62 FR 58688, Oct. 30, 1997]

1827.304 Procedures.

1827.304-1 General. (NASA supplements paragraphs (a), (b), (c), (f), (g), and (h))

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.302-(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization.

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization,

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the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Associate General Counsel (Intellectual Property) (Code GP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227-72 and forwarded, with recommendation, to Code GP for approval.

1827.304-2 Contracts placed by or for other Government agencies. (NASA supplements paragraph (a))

(a)(3) When a contract is placed for another agency and the agency does not request the use of a specific patent rights clause, the contracting officer, upon consultation with the installation intellectual property counsel, may use the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form) as modified by 1852.227-11 (see 1827.303-70(a)) or 1852.227-70, New Technology (see 1827.303-70(b)).

1827.304-3 Contracts for construction work or architect-engineer services. (NASA supplements paragraph (a))

(a) For construction or architect-engineer services contracts with other than a small business or nonprofit organization, see 1827.303-70(b).

1827.304-4 Subcontracts. (NASA supplements paragraph (a))

(a)(i) Unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(A) The clause at 1852.227-70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303-70(b) (1)-(6).

(B) The clause at FAR 52.227-11, Patent Rights—Retention by the Con-

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tractor (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.

1827.305-4 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))

(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

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contract without the contracting officer's prior written permission.

[62 FR 36715, July 9, 1997, as amended at 68 FR 45169, Aug. 1, 2003; 69 FR 35270, June 24, 2004]

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.

(i) The contract officer shall modify the clause at FAR 52.227-17, Rights in Data—Special Works by adding paragraph (f) as set forth in 1852.227-17.

(k)(i) The contracting officer shall add paragraph (e) as set forth in 1852.227-19(a) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(ii) The contracting officer shall add paragraph (f) as set forth at 1852.227-19(b) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(iii) See 1827.409-70.

[62 FR 36715, July 9, 1997, as amended at 69 FR 35270, June 24, 2004]

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).

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.

Subpart 1828.3—Insurance

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.

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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 non-construction 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 \$30,000 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.

[61 FR 55765, Oct. 29, 1996, as amended at 71 FR 71073, Dec. 8, 2006]

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.

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Subpart 1828.3—Insurance

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-1 Contract clause.

The contracting officer must insert the clause at FAR 52.228-7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311-1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

[65 FR 54440, Sept. 8, 2000]

1828.311-2 Agency solicitation provisions and contract clauses.

1828.311-270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228-80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at 1852.228-81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228-82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

[65 FR 54440, Sept. 8, 2000]

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities,

NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of \$100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of \$100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the

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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 1830—COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use and For Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

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

- 1830.7001-1—1830.7001-3 [Reserved]
- 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 1830.70—Facilities Capital Employed for Facilities in Use and For Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1—1830.7001-3 [Reserved]

1830.7001-4 Postaward FCCOM applications.

(a) *Interim billings based on costs incurred.* (1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These FCCOM calculations are interim estimates subject to adjustment.

(2) As actual cost of money factors are finalized, use the new factors to calculate FCCOM for the next accounting period.

(b) *Final settlements.* (1) Contract FCCOM for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB-CMF.

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Definitions.

(a) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92-41 (85 Stat. 97); or

(2) The time-weighted average of such rates for each cost accounting period during which the capital asset is being constructed, fabricated, or developed.

(b) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the capital asset.

1830.7002-2 Cost of money calculations.

(a) The interest rate referenced in 1830.7002-1(a)(1) is established semi-annually and published in the FEDERAL REGISTER during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate referenced in 1830.7002-1(a)(2), multiply the rates in effect during the months of construction by the number of months each rate was in effect, and then divide the sum of the products by the total number of months.

1830.7002-3 Representative investment calculations.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If the majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either:

(1) Determine a representative investment for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may either:

(1) Determine a representative investment for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost ac-

count for the cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(d) The method chosen by the contractor to determine the representative investment amount may be different for each capital asset being constructed, fabricated, or developed, provided the method fits the expenditure pattern of the costs incurred.

1830.7002-4 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 1830.7002-2) to the representative investment (see 1830.7002-3).

(1) When a representative investment is determined for a cost accounting period in accordance with 1830.7002-3(b)(1) or 1830.7002-3(c)(1), the cost of money rate shall be the time-weighted average rate.

(2) When a monthly representative investment is used in accordance with 1830.7002-3(b)(2) or 1830.7002-3(c)(2), the cost of money rate shall be that in effect each month. Under this method, the FCCOM is determined monthly, and the total for the cost accounting period is the sum of the monthly calculations.

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the accounting period or the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction, fabrication, or development of an asset takes more than one accounting period, the cost of money capitalized for the first accounting period will be included in determining the representative investment for any future cost accounting periods.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2—Contracts With Commercial Organizations

Sec.

1831.205 Selected costs.

1831.205-70 Contract clause.

1831.205-671 Solicitation provision.

1831.205

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.

1831.205-70 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.

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 46628, July 31, 2000; 69 FR 35271, June 24, 2004]

1831.205-671 Solicitation provision.

The contracting officer must insert a provision substantially the same as the provision at 1852.231-71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of \$500,000.

[62 FR 4467, Jan. 30, 1997, as amended at 65 FR 46628, July 31, 2000]

PART 1832—CONTRACT FINANCING

Sec.

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

1832.412 Contract clause.

1832.412-70 NASA Contract clauses.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

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1832.501-1 Customary progress payment rates.

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

Subpart 1832.7—Contract Funding

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

1832.705-270 NASA clauses for limitation of cost or funds.

Subpart 1832.10—Performance-Based Payments

1832.1005 Contract clauses.

1832.1009 Title.

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses.

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

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

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.

[61 FR 55768, Oct. 29, 1996, as amended at 69 FR 35271, June 24, 2004]

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

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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

1832.412 Contract clause. (NASA supplement paragraphs (e) and (f))

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

[63 FR 14040, Mar. 24, 1998]

1832.412-70 NASA Contract clauses.

When the clause at FAR 52.232-12 or its Alternates II or V are used, insert the clause at 1852.232-70, NASA Modification of FAR 52.232-12.

[63 FR 14040, Mar. 24, 1998]

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-1 Customary progress payment rates. (NASA supplements paragraph (a))

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232-16.

1832.502-4 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.

Subpart 1832.7—Contract Funding

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 1832.10—Performance-Based Payments

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.

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 31103, May 16, 2000; 69 FR 35271, June 24, 2004]

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.

[64 FR 18373, Apr. 14, 1999, as amended at 69 FR 35271, June 24, 2004]

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

Sec.

1833.103 Protests to the agency.

1833.106-70 Solicitation provision.

Subpart 1833.2—Disputes and Appeals

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 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.

[62 FR 11108, Mar. 11, 1997, as amended at 64 FR 36607, July 7, 1999; 67 FR 61519, Oct. 1, 2002; 69 FR 35271, June 24, 2004]

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

1833.215 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.

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

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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

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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]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1840 [RESERVED]

PART 1841—ACQUISITION OF UTILITY SERVICES

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

1841.501-70 NASA contract clause.

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

SOURCE: 62 FR 4474, Jan. 30, 1997, unless otherwise noted.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

1841.501-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.241-70, Renewal of Contract, in solicitations and contracts for utility services if it is desirable that the utility service be provided under the same terms and conditions for more than 1 year.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1842.2—Contract Administration Services

Sec.

1842.271 NASA clause.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.

1842.7002 Travel outside of the United States.

1842.7003 Emergency medical services and evacuation.

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

1842.7202 Contract clause.

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

SOURCE: 62 FR 14017, Mar. 25, 1997, unless otherwise noted.

Subpart 1842.2—Contract Administration Services

1842.271 NASA clause.

Insert the clause at 1852.242-70, Technical Direction, when paragraph 3(m) of the NASA Form 1634 specifically authorizes a COTR to issue technical direction.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242-72, Observance of Legal Holidays, in contracts when work will be performed at a NASA installation.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when it is desired that contractor employees not have access to the installation during Government holidays. This alternate may be appropriately modified for fixed-price contracts.

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions. This alternate may be appropriately modified for fixed-price contracts.

[62 FR 14017, Mar. 25, 1997, as amended at 63 FR 32764, June 16, 1998; 65 FR 46628, July 31, 2000]

1842.7002 Travel outside of the United States.

The contracting officer shall insert the clause at 1852.242-71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

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1842.7003 Emergency medical services and evacuation.

The contracting officer must insert the clause at 1852.242-78, Emergency Medical Services and Evacuation, in all solicitations and contracts when employees of the contractor are required to travel outside the United States or to remote locations in the United States.

[66 FR 18054, Apr. 5, 2001]

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

(a) Vouchers shall be submitted in accordance with the clause at 1852.216-87, Submission of Vouchers for Payment.

(b) The auditor shall retain an unpaid copy of the voucher.

(c) When a voucher submitted in accordance with the clause at 1852.216-87 contains one or more individual direct freight charges of \$100 or more, an ad-

ditional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

(a) [Reserved]

(b) Reporting requirements. (1) Use of the NASA Contractor Financial Management Reports, the NASA form 533 series, is required on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Contract value/scope	Period of performance	533M	533Q
\$500K to \$999K	1 year or more	Required	Optional.
\$1,000,000 and over	Less than 1 year	Required	Optional.
\$1,000,000 and over	1 year or more	Required	Required.

(2) When it is probable that a contract will ultimately meet the criteria in paragraph (b)(1) of this section through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract based on the estimated final contract value at the time of award.

[62 FR 14017, Mar. 25, 1997, as amended at 69 FR 44609, July 27, 2004]

1842.7202 Contract clause.

The contracting officer shall insert the clause at 1852.242-73, NASA Contractor Financial Management Reporting, in solicitations and contracts when any of the NASA Form 533 series of reports is required from the contractor.

[62 FR 36721, July 9, 1997]

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.

1843.205 Contract clauses.

1843.205-70 NASA contract clauses.

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.

1843.7102 Solicitation provision and contract clause.

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

SOURCE: 62 FR 14022, Mar. 25, 1997, unless otherwise noted.

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243-1, Changes—Fixed Price; FAR 52.243-2, Changes—Cost Reimbursement; and FAR 52.243-4,

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Changes; and in the prescription at 43.205(c) for FAR 52.243-3, Changes—Time-and-Material or Labor-Hours, the period within which a contractor must assert its right to an equitable adjustment may be varied not to exceed 60 calendar days.

[65 FR 58932, Oct. 3, 2000]

1843.205-70 NASA contract clauses.

(a)(1) The contracting officer may insert in contracts a clause substantially the same as 1852.243-70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract.

(2) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer may insert a clause substantially as stated at 1852.243-72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

[62 FR 14022, Mar. 25, 1997, as amended at 63 FR 17339, Apr. 9, 1998; 66 FR 53548, Oct. 23, 2001]

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in

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cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

1843.7102 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.243-71, Shared Savings, in all solicitations and contracts expected to exceed \$1,000,000, except those awarded under FAR part 12, NRA and AO procedures, or the SBIR and STTR programs.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.2—Consent to Subcontracts

Sec.

1844.204 Contract clauses.

1844.204-70 NASA contract clause.

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

SOURCE: 62 FR 14023, Mar. 25, 1997, unless otherwise noted.

Subpart 1844.2—Consent to Subcontracts

1844.204 Contract clauses.

1844.204-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.244-70, Geographic Participation in the Aerospace Program, in all research and development solicitations and contracts of \$500,000 or over that will be performed within the United States.

PART 1845—GOVERNMENT PROPERTY

Subpart 1845.1—General

Sec.

1845.106-70 NASA contract clauses and solicitation provision.

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.405 Contracts with foreign governments or international organizations.

1845.405-70 NASA procedures.

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1845.407 Non-Government use of plant equipment.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.502 Contractor responsibility.
1845.502-1 Receipts for Government property.
1845.502-70 Contractor-acquired property.
1845.505 Records and reports of Government property.
1845.505-14 Reports of Government property.
1845.508 Physical inventories.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.
1845.607 Scrap.
1845.607-1 General.
1845.607-170 Contractor's approved scrap procedure.
1845.607-2 Recovering precious metals.
1845.610 Sale of surplus contractor inventory.
1845.610-4 Contractor inventory in foreign countries.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.
1845.7101-1 Property classification.
1845.7101-2 Transfers of property.
1845.7101-3 Unit acquisition cost.
1845.7101-4 Types of deletions from contractor property records.
1845.7101-5 Contractor's privileged financial and business information.
1845.7102 Instructions for preparing DD Form 1419.

Subpart 1845.72—Contract Property Management

1845.7201—1845.7209-2 [Reserved]
1845.7209-3 Loss, damage, or destruction of Government property while in contractor's possession or control.
1845.7209-4 Financial reports.
1845.7210 Contractor utilization of Government property.
1845.7210-1 Utilization surveys.

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

SOURCE: 62 FR 36722, July 9, 1997, unless otherwise noted.

Subpart 1845.1—General

1845.106-70 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.245-70, Contractor Requests for Government-Owned Equipment, in all solicitations and contracts that have the potential for contractor acquisition of equipment for the account of the Government that is not listed as a specific contract deliverable. See 1845.7102 for instructions on preparing DD Form 1419.

(b)(1) The contracting officer shall insert the clause at 1852.245-71, Installation-Accountable Government Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or directly leased by NASA when the contractor does not have authority to acquire property for the account of the Government.

(2) Use of this clause is subject to the SEMO's concurrence that adequate installation property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify in the contract the nature, quantity, and acquisition cost of such property and make the property available on a no-charge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) Contracting officers shall list separately in the contract any property provided under a FAR 52.245 Government property clause that remains accountable to the contractor during its use on the contract (such as property used at the contractor's or a subcontractor's off-site facility) and which

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is not also subject to the clause at 1852.245-71. The contracting officer shall address any specific maintenance considerations (e.g., requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(b) See 1845.106-70(e).

(c) The contracting officer shall insert the clause at 1852.245-72, Liability for Government Property Furnished for Repair and Services, in fixed-price solicitations and contracts (except for experimental, developmental, or research work with educational or non-profit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement contracts unless all property to be provided is subject to the clause at 1852.245-71, Installation-Accountable Government Property. The clause shall also be included in other types of contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) When approved by the Logistics Management Division of the Headquarters Office of Infrastructure and Management (Code OJG), the contracting officer shall insert the clause at 1852.245-74, Contractor Accountable On-Site Government Property, in lieu of the clause at 1852.245-71, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer's written request for approval shall include a determination of costs that will be (1) avoided (e.g., additional costs to the installation's property management systems and staffing) and (2) incurred (e.g., reimbursable costs of the contractor to implement, staff, and oper-

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ate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245-75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245-2 with its Alternate II or 52.245-5, with its Alternate I is used.

(g) The contracting officer shall insert the clause at 1852.245-76, List of Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245-77, List of Installation-Accountable Property and Services, in solicitations and contracts that require performance at the center and authorize contractor use of property within the physical borders of the center.

(i) The contracting officer shall insert the provision at 1852.245-79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(j) The contracting officer shall insert the clause at 1852.245-80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when government property (real property, commercially available equipment, special test equipment, or special tooling) accountable under another contract(s) is authorized for use.

[62 FR 36722, July 9, 1997, as amended at 69 FR 44610, July 27, 2004]

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.405 Contracts with foreign governments or international organizations.

1845.405-70 NASA procedures.

(a) NASA policy is to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

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(b)—(d) [Reserved]

[62 FR 36722, July 9, 1997, as amended at 65 FR 31103, May 16, 2000; 69 FR 44610, July 27, 2004]

1845.407 Non-Government use of plant equipment. (NASA supplements paragraph (a)).

For NASA, the coverage in FAR 45.407, applies to all equipment, not just plant equipment.

[62 FR 36722, July 9, 1997. Redesignated at 64 FR 36606, July 7, 1999; 69 FR 44610, July 27, 2004]

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.502 Contractor responsibility.

1845.502-1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, NASA Property in the Custody of Contractors (see 1845.7101).

1845.502-70 Contractor-acquired property.

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) Facilities.

(1) Prior contracting officer approval, if the facilities are not already specifically described in the contract as contractor-acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or equivalent format, and return of Certificate of Nonavailability.

(3) Submission of the written statement prescribed by FAR 45.302-1(a)(4).

(b) Special test equipment.

(1) Contracting officer approval 30 days in advance if the equipment is not identified in the solicitation or contract.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

(c) Special tooling.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability.

(d) Material. If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting office consent if required by that clause.

(e) Agency-peculiar property.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

1845.505 Records and reports of Government property.

1845.505-14 Reports of Government property. (NASA supplements paragraphs (b))

(b) When the clause at 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, is included in the contract, the contractor shall submit NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form and 1845.71. Contractor property control systems shall distinguish between Government furnished and contractor acquired property for purposes of reporting the acquisition cost in the property classifications shown in FAR 45.505-14(a) (1) through (5).

1845.508 Physical inventories.

NASA contractors shall reconcile inventories with the official property records and submit reports to the property administrator within 30 days after

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inventory completion. The contractor shall investigate all losses of property and discoveries of unrecorded property to determine the causes of the discrepancy and actions needed to prevent its recurrence.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

(1) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(2)(i) The contractor's or subcontractor's authority to approve the sale, purchase, or retention of Government property on a contract which is excess to needs after Government reutilization screening at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain such property at less than cost with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(A) A sale by a subcontractor to the contractor, the next higher-tier subcontractor, or their affiliates; or

(B) A sale, purchase, or retention by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(ii) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.607 Scrap.

1845.607-1 General.

1845.607-170 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.

(b)—(c) [Reserved]

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in ac-

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cordance with the provisions of FAR Part 45 and 1845.

[62 FR 36722, July 9, 1997, as amended at 69 FR 44610, July 27, 2004]

1845.607-2 Recovering precious metals. (NASA supplements paragraph (b)).

(b) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS-R, Federal Center, Battle Creek, MI 49017-3092, for instructions regarding disposition.

1845.610 Sale of surplus contractor inventory.

1845.610-4 Contractor inventory in foreign countries.

NASA procedures for disposal are in NPR 4300.1, NASA Personal Property Disposal Procedures and Guidelines.

[62 FR 36722, July 9, 1997, as amended at 65 FR 58932, Oct. 3, 2000; 69 FR 44610, July 27, 2004]

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain periodic data from those records to meet these requirements. Changes in Federal Accounting Standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NASA Form (NF) 1018. The specific Statements of Federal Financial Accounting Standards (SFFAS) to be used for property records are SFFAS No. 3 "Accounting for Inventory and Related Property", SFFAS No. 6 "Accounting for Property, Plant and Equipment", SFFAS No. 10 "Accounting for Internal Use Software", and SFFAS No. 11 "Amendments to PP&E: Definitions"

issued by the Federal Accounting Standards Advisory Board. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart. NF 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy, completeness, and timeliness of the report are critical to many aspects of NASA's operations.

[68 FR 62024, Oct. 31, 2003]

1845.7101-1 Property classification.

(a) *General.* (1) Contractors shall report costs in the classifications on NF 1018, as described in this section. The cost of heritage assets and obsolete property will be reported on the NF 1018 under the appropriate classification. Supplemental reporting may also be required.

(2)(i) Heritage assets are property, plant and equipment that possess one or more of the following characteristics:

(A) Historical or natural significance;

(B) Cultural, educational or artistic importance; or

(C) Significant architectural characteristics.

(ii) Examples of NASA heritage assets include buildings and structures designated as National Historic Landmarks as well as aircraft, spacecraft and related components on display to enhance public understanding of NASA programs. Heritage assets which serve both a heritage and government operation function are considered multi-use when the predominant use is in general government operations. Multi-use heritage assets will not be considered heritage assets for NF 1018 supplemental reporting purposes.

(3) Obsolete property is property for which there are no current plans for use in its intended purpose (*i.e.*, it no longer provides service to NASA operations). Examples of obsolete property are items in configurations which are no longer required or used by NASA or items held for engineering evaluation purposes only. NASA may have approved the retention of these items for programmatic reasons even though they have no current plans for use.

(b) *Land.* Includes costs of land and improvements to land. Contractors shall report land with a unit acquisition cost of \$100,000 or more.

(c) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Contractors shall report buildings with a unit acquisition cost of \$100,000 or more. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(d) *Other Structures and Facilities.* Includes costs of acquisitions and improvements of real property (*i.e.* structures and facilities other than buildings); for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences. Contractors shall report other structures and facilities with a unit acquisition cost of \$100,000 or more and a useful life of two years or more.

(e) *Leasehold improvements.* Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$100,000 or more and a useful life of two years or more.

(f) *Construction in progress.* Includes costs of work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title, regardless of value.

(g) *Equipment.* Includes costs of commercially available personal property

capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, software, test equipment, including their accessory or auxiliary items). Software integrated into and necessary to operate another item of Government property is considered to be an auxiliary item (see FAR 45.501) and should be considered part of the item of which it is an integral part. Other software to which NASA has title shall be classified as an individual item of equipment for reporting purposes if it has a useful life of 2 years or more and acquisition cost of \$1,000,000 or more (also see 1845.7101-3(g)). Enhancement costs for existing software should be added to the software acquisition cost if the enhancement results in significant additional capability beyond that for which the software was originally developed (*i.e.*, a capability that was not included in the original software specifications, the total cost of the enhancement is \$1,000,000 or more, or the expected useful life of the enhanced software is 2 years or more). Software licenses are excluded. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All other items.

(h) *Special tooling*. Includes costs of equipment and manufacturing aids (and their components and replacements) of such a specialized nature that, without substantial modification or alteration, their use is limited to development or production of particular supplies or parts, or performance of particular services (see FAR 45.101). Examples include jigs, dies, fixtures, molds, patterns, taps and gauges. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All other items.

(i) *Special test equipment*. Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of

equipment (see FAR 45.101). Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All other items.

(j) *Material*. Includes costs of NASA-owned property held in inventory regardless of whether or not it is unique to NASA programs, that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, spares, parts, assemblies, small tools and supplies. Material that is part of work-in-process is not included. Contractors shall report the amount for all Materials in inventory, regardless of unit acquisition cost.

(k) *Agency-Peculiar Property*. Includes costs of completed items, unique to NASA aeronautical and space programs, which are capable of stand-alone operation. Examples include research aircraft, reusable space vehicles, ground support equipment, prototypes, and mock-ups. The amount of property, title to which vests in NASA as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property. Completed end items not related to the International Space Station or the Space Shuttle program which otherwise meet the definition of Agency-Peculiar Property, and are destined for permanent operation in space, such as satellites and space probes, shall not be reported. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All other items.

(l) *Contract Work-in-Process*. Work-in-process (WIP) consists of property items under construction (*i.e.*, not complete). It includes costs of all work-in-process regardless of value, and excludes costs of completed items reported in other categories. While the costs of WIP for International Space Station and Space Shuttle components should be included as WIP, satellites and space probes and their components

should be excluded from WIP as those items will be accounted for by NASA.

[65 FR 54814, Sept. 11, 2000, as amended at 65 FR 82297, Dec. 28, 2000; 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62024, Oct. 31, 2003]

1845.7101-2 Transfers of property.

A transfer is a change in accountability between and among prime contracts, NASA Centers, and other Government agencies (e.g., between contracts of the same NASA Center, contracts of different NASA Centers, a contract of one NASA Center to another, a NASA Center to a contract of another NASA Center, and a contract to another Government agency or its contract). To enable NASA to properly control and account for all transfers, they shall be adequately documented. Adequate documentation includes the appropriate dollar amount of the asset(s) transferred (as prescribed in 1845.7101-3) and the formal, signed NASA or contractor authorization approving the transfer. In addition, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be accounted for and reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245-72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant NASA Center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided to conduct repairs are reportable, regardless of contract type.

(a) *Approval and notification.* The contractor must obtain approval of the contracting officer or designee for

transfers of property off the prime contract before shipment. Each shipping document must be signed by the contracting officer or designee demonstrating such approval. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for equipment), unit acquisition costs (as defined in 1845.7101-3, Unit Acquisition Cost), original Government acquisition dates for items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more, and any other appropriate identifying or descriptive data. Where the DD Form 250, Material Inspection and Receiving Report, is used, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original Government acquisition date shall be shown in Block 23, by item. Other formats, such as the DD Form 1149, Requisition and Invoice/Shipping Document, should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR Part 45 and this Part 1845, or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the formally approved shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly submit copies of shipping and receiving documents to the Center Deputy Chief Financial Officer, Finance, responsible for their respective contracts when accountability for NASA property is transferred to, or received from, other contracts, contractors, NASA Centers, or Government agencies.

(b) *Reclassification.* If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is

identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, FSC, unit acquisition cost, Government acquisition date, required signatures, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505-2. The contracting officer shall assist the Government Property Administrator and the receiving contractor to obtain all required information for the receiving contractor to establish adequate property records.

[65 FR 54815, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62025, Oct. 31, 2003]

1845.7101-3 Unit acquisition cost.

(a) The unit acquisition cost shall include all costs incurred to bring the property to a form and location suitable for its intended use. The following is representative of the types of costs that shall be included, when applicable:

(1) Amounts paid to vendors or other contractors.

(2) Transportation charges to the point of initial use.

(3) Handling and storage charges.

(4) Labor and other direct or indirect production costs (for assets produced or constructed).

(5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys.

(6) Acquisition and preparation costs of buildings and other facilities.

(7) An appropriate share of the cost of the equipment and facilities used in construction work.

(8) Fixed equipment and related installation costs required for activities in a building or facility.

(9) Direct costs of inspection, supervision, and administration of construction contracts and construction work.

(10) Legal and recording fees and damage claims.

(11) Fair values of facilities and equipment donated to the Government.

(b) Acquisition cost shall include, where appropriate, for contractor acquired property, related fees, or a *pro rata* portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate are those in which the contractor designs, develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(c) Acquisition cost shall be developed using actual costs to the greatest extent possible, especially costs directly related to fabrication such as labor and materials. Where estimates are used, there must be a documented methodology based on a historical basis. All acquisition costs shall be properly documented, supported and retained. Supporting documentation shall be made available upon request.

(d) The use of weighted average methodologies is acceptable for valuation of Material.

(e) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(f) Only modifications that improve an item's capacity or extend its useful life two years or more and that cost \$100,000 or more shall be reported on the NF 1018 on the \$100,000 & Over line. The costs of any other modifications, excluding routine maintenance, will be reported on the Under \$100,000 line. If an item's original unit acquisition cost is less than \$100,000, but a single subsequent modification costs \$100,000 or more, that modification only will be reported as an item \$100,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under \$100,000 total. The quantity for the modified item will remain "1" and be reported

with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under \$100,000, it shall be reported as under \$100,000.

(g) Software acquisition costs include software costs incurred up through acceptance testing and material internal costs incurred to implement the software and otherwise make the software ready for use. Costs incurred after acceptance testing are excluded. License, maintenance, training, and data conversion costs are also excluded. If the software is purchased as part of a package, the costs will need to be segregated in such manner as to ensure that the excluded costs (maintenance, training, etc.) are not reported as part of the software's acquisition cost. Enhancement costs for existing software should be added to the acquisition cost if the enhancement results in significant additional capability beyond that for which the software was originally developed (*i.e.* a capability that was not included in the original software specifications), the total cost of the enhancement is \$1,000,000 or more, and the expected useful life of the enhanced software is 2 years or more. Include the same types of cost as indicated above under new software. Costs incurred solely to repair a design flaw or perform minor upgrades should not be included.

(h) The computation of work in process (WIP) shall include all direct and indirect costs of fabrication, including associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory. The computation of WIP shall incorporate the other requirements for unit acquisition cost as outlined in paragraphs (a) through (e) of this section. In addition, acquisition cost of property furnished by the Government,

which has been incorporated in the property item under construction or in process of fabrication, should be included. Do not include costs for operation or repairing existing completed property items. Once the property is complete, include all the costs outlined above in its acquisition value in the property record. The WIP values are inception to date until such time as the WIP is completed. It does not include future costs.

[65 FR 54815, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62025, Oct. 31, 2003]

1845.7101-4 Types of deletions from contractor property records.

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Lost, damaged or destroyed.* Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(b) *Transferred in Place.* Deletion amounts that result from transfer of property to a follow-on prime contract or other prime contract with the same contractor.

(c) *Transferred to NASA Center accountability.* Deletion amounts that result from transfer of accountability to the NASA Center responsible for the contract, whether or not items are physically moved.

(d) *Transferred to another NASA Center.* Deletion amounts that result from transfer of accountability to a NASA Center other than the one responsible for the contract, whether or not items are physically moved.

(e) *Transferred to another Government agency.* Deletion amounts that result from transfer of property to another Government agency.

(f) *Purchased at cost/returned for credit.* Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605-1, or from contractor returns to suppliers under FAR 45.605-2.

(g) *Disposed of through plant clearance process.* Deletions other than transfers within the Federal Government, *e.g.*, donations to eligible recipients, sold at less than cost, or abandoned/directed destruction, or trade-ins.

(h) *Other.* Types of deletion other than those reported in paragraph (a) through (g) of this section such as those resulting from reclassifications (e.g. from equipment to agency-peculiar property).

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68535, Nov. 12, 2002]

1845.7101-5 Contractor's privileged financial and business information.

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA Centers.

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001]

1845.7102 Instructions for preparing DD Form 1419.

(a) The contractor shall enter the essential information covering Sections I and II before submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the Industrial Property Officer (IPO). The IPO shall review each submission for completeness and authenticity. Incomplete or invalid requests shall be returned for correction.

(b) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA within 30 days after allocation. A copy of the DD Form 1419, or equivalent format, will serve as the clearance document to inspect the equipment at the storage site. Note acceptance or rejection of the item, without inspection or after inspection in Section VI. If the item is acceptable, execute Section VII. Cite the NASA appropriation symbol where applicable in Section VII.

(c) The IPO shall assign a requisition number to each DD Form 1419, or equivalent format request.

(d) Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year. For example, April 15, 1997, would be written as 7095 (April 15 being the 95th day of the year). The last entry will be a four-digit number from 0001 to 9999 to sequentially number req-

uisition forms prepared on the same date. For example, the ninth requisition prepared on April 15, 1997, would be 7095-0009, preceded by the FEDSTRIP/MILSTRIP Activity Address Code. When submitting subsequent DD Forms 1419, or equivalent format, related to the item requested, the IPO shall use the same requisition number and add the alpha code to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

(e) Detailed directions for completing the DD Form 1419 follow. The contractor may elect to provide the required data in an equivalent format, which complies with these directions.

Section I

Item Description. To ensure adequate screening, the item description must be complete. For single-purpose equipment or general-purpose equipment with special features, requests must contain detailed descriptive data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal Supply Code for manufacturer (Cataloging Handbook H4-1) of the item requested.

Block 3. Enter the manufacturer's model style, or catalog number assigned to the equipment being requisitioned. Always use the model number, if available. The style number is the next preference. Enter "None" in this block if the model, style or catalog number is not known.

Block 4. Enter the first four digits of the National Stock Number, if known.

Block 5. Not applicable.

Block 6. Self-explanatory.

Block 7. Place an "X" in the applicable block to indicate whether you desire to physically inspect the item before acceptance.

Block 8. Self-explanatory.

Block 9. Enter the complete description of the item. Continue the description in Block 53 if additional space is needed.

Section II

Block 10. Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature will be referred. Specify the telephone number of an individual who will respond to inquiries concerning the request.

Block 11. Enter the contract number or document number authorizing acquisition of the items shown in Section I. This normally will be a facility contract number. Otherwise, it should be a purchase order or procurement request number.

Block 12. Self-explanatory.

Block 13. Not applicable.

Block 14. Disregard the "Military" block. Show the NASA contract number and program for which the item is to be used.

Block 15. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., that the equipment must satisfy.

Block 16. Determine the date the item must be installed to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 17. Enter the date by which NASA must issue a Certificate of Non-availability. Determine the date by subtracting the acquisition lead time and 30 days administrative lead time from the date shown in Block 16.

Block 18. Enter the Defense Priority and Allocations System (DPAS) rating assigned to the contract or anticipated purchase order, if applicable.

Block 19. Place an "X" in the appropriate box. If for replacement, identify the item being replaced and the reason for replacement.

Block 20. Place an "X" in the appropriate box. Show the appropriate symbol if the answer is "yes."

Block 21. Not applicable.

Blocks 22 and 23. In addition to the official's title and signature, type the

signing official's name, office symbol or name, and telephone number plus extension. The company representative who prepares and submits the requirement to the cognizant NASA certifying office should sign.

Block 24. Self-explanatory.

Block 25a. Not applicable.

Block 25b. Enter the name and address of the installation certifying the requirement.

Block 25c. This block is for signature of the property administrator or contracting officer at plant level.

Block 25d. Self-explanatory.

Block 25e. This block is for the signature of NASA installation official certifying the requirement.

Block 25f. Self-explanatory.

Section III

Blocks 26-29. Self-explanatory.

Section IV

N/A

Section V

Complete this section if equipment is unavailable.

Section VI

Blocks 44-47. The requesting official signing Section II, Block 23, shall complete Section VI and shall list reasons for non-acceptance in Section VIII, Remarks, or on a separate document attached to the DD Form 1419.

Section VII

Block 48. Enter the complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate railhead and truck delivery points when other than the address named.

Blocks 49 and 50. Self-explanatory.

Blocks 51 a. and b. Ensure that NASA appropriation symbols are included with the work order number.

Block 51c. Enter the NASA appropriation symbol chargeable for any special work ordered (e.g., rebuild, repair, or accessory replacement).

Block 51d. Enter the NASA installation and office symbol for the organization that will make payment for transportation and packing, crating, and handling.

Block 52. Self-explanatory.

Section VIII

Block 53. This block can be used to expand or explain entries made in Blocks 1 through 52. When requisitioning equipment from excess listings, identify the issuing office, list number, date, control number, and item number assigned to the equipment. When requesting equipment from DOD inventories, refer to DOD instructions.

Subpart 1845.72—Contract Property Management

1845.7201—1845.7209-2 [Reserved]

1845.7209-3 Loss, damage, or destruction of Government property while in contractor's possession or control.

(a) The property administrator shall require the contractor to report any loss, damage, or destruction of Government property in its possession or control (including property in the possession or control of subcontractors) as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of Government property considered unreasonable by the property administrator or loss, damage, or destruction of Government property not reported by the contractor, the property administrator shall prepare a statement of the items and amount involved. This statement shall be furnished to the contractor for investigation and submission of a written report to the property administrator relative to the incidents reported.

(c) The contractor's reports referenced in paragraphs (a) and (b) of this section shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

(1) The contractor's name and the contract number;

(2) A description of items lost, damaged, destroyed, or unreasonably consumed;

(3) The cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances

of damage (in event actual cost is not known, use a reasonable estimate);

(4) The date, time (if pertinent), and cause or origin of the loss, damage, destruction, or consumption;

(5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(6) Insurance, if any, covering the Government property or any part or interest in any commingled property;

(7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determining liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to the contractor's liability for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, industrial specialist, insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. If analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes a risk assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor is liable for the loss, damage, destruction, or unreasonable consumption of Government property, he or she shall forward the complete file with conclusions and

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recommendations to the contracting officer for review and determination. The file shall contain—

- (i) A statement of facts as supported by investigation;
- (ii) Recommendations as to the contractor's liability and its amount;
- (iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;
- (iv) Requirements for disposition, repair, or replacement of damaged property; and
- (v) Other pertinent comments.

(2) A copy of the contracting officer's determination shall be furnished to the contractor and the property administrator, and a copy shall be retained in the contracting officer's files. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

1845.7209-4 Financial reports.

The property administrator is responsible for obtaining financial reports as prescribed in 1845.505-14 for all assigned contracts. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (see 1852.245-73) except as noted in 1845.7101-4(c).

1845.7210 Contractor utilization of Government property.

1845.7210-1 Utilization surveys.

(a) The property administrator is responsible for ensuring that the contractor has effective procedures for evaluating Government property utilization. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of these procedures.

(b)—(d) [Reserved]

(e) In the absence of adequate justification for retention, the contractor shall identify and report Government-owned plant equipment in accordance

with FAR 45.502(g) and 45.509-2(b)(4). Items that are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contracting officer shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

[62 FR 36722, July 9, 1997, as amended at 69 FR 44610, July 27, 2004]

PART 1846—QUALITY ASSURANCE

Subpart 1846.3—Contract Clauses

Sec.

1846.370 NASA contract clauses.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

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1846.670-4 Multiple shipments.

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1846.671 Contract quality assurance on shipments between contractors.

1846.672 Preparing DD Forms 250 and 250c.

1846.672-1 Preparation instructions.

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1846.672-6 Packing list instructions.

1846.672-7 Receiving instructions.

1846.673 Distribution of DD Forms 250 and 250c.

1846.674 Contract clause.

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

SOURCE: 62 FR 14024, Mar. 25, 1997, unless otherwise noted.

Subpart 1846.3—Contract Clauses

1846.370 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.246-70, Mission Critical Space System Personnel Reliability Program, in solicitations and contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program.

(b) The contracting officer shall insert the clause at 1852.246-73, Human

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Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670-1 General.

(a) This Subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to evidence Government contract quality.

(b) MIRRs are used to document contract quality assurance (CQA), acceptance of supplies and services, and shipments. MIRRs are not used for—

- (1) Shipments by subcontractors not made to the Government;
- (2) Shipment of contractor inventory (see FAR 45.601); or
- (3) Movement of Government property unless for original acquisition.

[62 FR 14024, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

1846.670-2 Applicability.

(a) This subpart applies to all deliveries of supplies or services acquired by or for NASA except:

- (1) Acquisitions under FAR part 13;
- (2) Negotiated subsistence acquisitions; or
- (3) Contracts for which the end item is a technical or scientific report.

(b) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders

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placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

(c) When NASA provides CQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

1846.670-3 Use.

The DD Form 250 is a multipurpose report used for—

- (a) Providing evidence of CQA at origin or destination;
- (b) Providing evidence of acceptance at origin or destination;
- (c) Packing list documentation;
- (d) Receiving;
- (e) Shipping;
- (f) Contractor invoice; and
- (g) Contractor invoice support.

1846.670-4 Multiple shipments.

(a) If the “shipped to,” “marked for,” “shipped from,” “CQA,” and “acceptance” data are the same for more than one shipment made on the same day under the same contract in a single car, truck, or other vehicle, one MIRR shall be prepared to cover all such shipments.

(b) If the volume of the shipments precludes the use of a single car, truck, or other vehicle, a separate MIRR shall be provided for each vehicle.

[62 FR 14024, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

1846.670-5 Forms.

(a) Contractors may obtain MIRR forms from the contracting office at no cost.

(b) Contractors may print forms, provided their format and dimensions are identical to the MIRR forms printed by the Government.

1846.671 Contract quality assurance on shipments between contractors.

(a) The supplier’s commercial shipping document/packing list shall indicate performance of required CQA actions at subcontract level.

The following entries shall be made on the document/packing list:

Required CQA of items has been performed.

(Signature of Authorized Government Representative)

(Date)

(Typed Name and Office)

(b) Distribution for Government purposes shall be one copy each—

- (1) With shipment;
- (2) For the Government representative at consignee (via mail); and
- (3) For the Government representative at consignor.

1846.672 Preparing DD Forms 250 and 250c.

1846.672-1 Preparation instructions.

(a) General. (1) Dates shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 96SEP24).

(2) Addresses shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) The data entered in the blocks at the top of DD Form 250C shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT).* Enter the contract number, with its identifying center prefix, as contained in the contractual document, including any call/order number.

(d) *Block 2—SHIPMENT NO.* (1) The shipment number is a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each "shipped from" address (Block 11). The prefix shall be different for each "Shipped From" address and shall

remain constant throughout the contract period.

(ii) The serial number for the first shipment under a prime contract from each "shipped from" address shall be 0001; subsequent shipments under that prime contract shall be consecutively numbered. Alpha-numeric shall be used when more than 9,999 numbers are required. Alpha-numeric shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999. When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a "replacement shipment" is involved (see paragraph (r)(4)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect

(i) To direct the subcontractor to suffix the "Z" or

(ii) On receipt of the subcontractor final shipment information, to correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a "Z" to that shipment number.

(e) *Block 3—DATE SHIPPED.* Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reinsurance of the MIRR is not required to show the actual shipping date.

(f) *Block 4—B/L TCN.* When applicable, enter the commercial or Government bill of lading number after "B/L"; and the Transportation Control Number after "TCN."

(g) *Block 5—DISCOUNT TERMS.* (1) The Contractor may enter the discount in terms of percentages on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-5.

(h) *Block 6—INVOICE.* (1) The contractor may enter the invoice number and actual or estimated date on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(2) When the MIRR is used as an invoice, see 1846.672-5.

(i) *Block 7—PAGE/OF.* Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8—ACCEPTANCE POINT.* Enter an "S" for origin or "D" for destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for other if the point of acceptance is not specified in the contract.

(k) *Block 9—PRIME CONTRACTOR.* Enter the code and address.

(l) *Block 10—ADMINISTERED BY.* Enter the code and address of the contracting office cited in the contract.

(m) *Block 11—SHIPPED FROM/CODE/FOB.* (1) Enter the code and address of the "shipped from" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services that do not require delivery of items upon completion, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" an "S" for origin or "D" for destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12—PAYMENT WILL BE MADE BY.* Enter the address of the payment office cited in the contract.

(o) *Block 13—SHIPPED TO/CODE.* Enter the code and address from the contract or shipping instructions.

(p) *Block 14—MARKED FOR/CODE.* Enter the code and address from the contract or shipping instructions.

(q) *Block 15—ITEM NO.* Enter the item number used in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16—STOCK/PART NO./DESCRIPTION.* (1) Enter, as applicable, for each item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal Supply Code (as published in Cataloging Handbook H4-1), and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind (e.g., "Resistor"). Below this description, enter the contract item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) For service items, enter the word "SERVICE" followed by a short description of less than 20 characters. Do not complete items 4, 13, and 14 when material is not shipped.

(3) For all contracts administered by the Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. ____ (State weight in pounds only).

(4) Enter on the next line the following as appropriate (entries may be extended through Block 20). When entries apply to more than one item in the MIRR, enter them only once after

the last item and reference the applicable item numbers.

(i) Enter in capital letters any special handling instructions/limits for material environmental control (e.g., temperature, humidity, aging, freezing, and shock).

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter "GFP".

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT" (see paragraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____."

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: "These components were listed as shortages on Shipment Number _____, date shipped _____."

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to _____, Quantity _____, Item _____, Ownership (Government/contractor)."

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering "PAYMENT COPY" in approximately one-half-inch outline-type letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17—QUANTITY SHIP/REC'D.*

(1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" top designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18 UNIT.* Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes,

enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage.

(u) *Block 19—UNIT PRICE.* Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20—AMOUNT.* Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21—CONTRACT QUALITY ASSURANCE.* The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) "A. ORIGIN."

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) "B. DESTINATION."

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance of CQA and acceptance are at destination, the authorized Government representative shall—

(A) Place an "X" in the appropriate box(es);

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(x) *Block 22—RECEIVER'S USE.* This block shall be used by the receiving authority (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or

in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23—CONTRACTOR USE ONLY.* This block is provided and reserved for contractor use.

1846.672-2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672-3 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter "See Attached Distribution List."

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the "total" quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

1846.672-4 Correction instructions.

When, because of errors of omissions, it is necessary to correct the MIRR after distribution, it shall be revised by

correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 and 17, enter the words "*CORRECTIONS HAVE BEEN VERIFIED*" on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) MIRR shall not be corrected for Block 19 and 20 entries.

(d) Clearly mark pages of the MIRR requiring correction with the words "*CORRECTED COPY*", avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, also mark page 1 "*CORRECTED COPY*".

(e) Page 1 and only those continuation pages marked "*CORRECTED COPY*" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672-5 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice in lieu of a commercial form. If the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy "*ORIGINAL INVOICE*" and the remaining three copies "*INVOICE COPY*".

(c) Forward the four copies to the payment office (Block 12 address).

1846.672-6 Packing list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked "*PACKING LIST*".

1846.672-7 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If acceptance or CQA and acceptance of supplies are required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts, except those using simplified acquisition procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared. Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

PART 1847—TRANSPORTATION

Subpart 1847.3—Transportation in Supply Contracts

Sec.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-70 NASA contract clauses.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

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

SOURCE: 62 FR 14028, Mar. 25, 1997, unless otherwise noted.

1847.305

Subpart 1847.3—Transportation in Supply Contracts

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-70 NASA contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.247-72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b. point is destination and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert a clause substantially as stated at 1852.247-73, Bills of Lading, in f.o.b. origin solicitations and contracts.

[62 FR 14028, Mar. 25, 1997, as amended at 67 FR 38908, June 6, 2002]

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247-71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees. The clause shall also be included in applicable subcontracts (including vendor deliveries).

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.5—Contract Termination Clauses

Sec.

1849.505 Other termination clause.

1849.505-70 NASA contract clause.

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

SOURCE: 62 FR 14030, Mar. 25, 1997, unless otherwise noted.

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Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clause.

1849.505-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all solicitations and contracts for utilities services.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.4—Residual Powers

Sec.

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403-1 Indemnification requests.

1850.403-170 Subcontractor indemnification requests.

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

SOURCE: 62 FR 14031, Mar. 25, 1997, unless otherwise noted.

Subpart 1850.4—Residual Powers

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403-1 Indemnification requests. (NASA supplements paragraph (a))

(a) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

[62 FR 14031, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

1850.403-170 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause

should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.403-1. The prime contractor's request shall provide information responsive to 1850.403-1, FAR 50.403-1, and FAR 50.403-2(a) (1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

Sec.

1851.102-70 Contractor acquisition of filing cabinets.

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.205 Contract clause.

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

SOURCE: 62 FR 14032, Mar. 25, 1997, unless otherwise noted.

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.102-70 Contractor acquisition of filing cabinets.

(a) The Contractor officer must approve any planned contractor acquisition of filing cabinets whose title will vest in the Government. The con-

tracting officer shall ensure that the contractor takes the following actions before submitting a request for approval:

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods; and

(4) Take other actions to reduce the need for filing cabinets.

(b) If after taking the actions in paragraphs (a)(1) through (4) of this section, the contractor requires additional filing capacity, it shall submit for contracting officer approval a request to order filing cabinets. This request shall include a discussion of why sufficient additional filing capacity is necessary and shall address the results of the actions in paragraphs (a) (1) through (4) of this section. The contracting officer shall review the request in consultation with the Records Management Officer, the Property and Supply Officer, and the project officer, is appropriate.

[62 FR 14032, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.205 Contract clause.

When the clause at FAR 52.251-2 is included in a solicitation or contract, also include the clause set forth at 1852.223-76.

[68 FR 43334, July 22, 2003]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1852.000 Scope of part.

Subpart 1852.2—Texts of Provisions and Clauses

- 1852.203-70 Display of Inspector General Hotline Posters.
- 1852.204-75 Security classification requirements.
- 1852.204-76 Security requirements for unclassified information technology resources.
- 1852.208-81 Restrictions on printing and duplicating.
- 1852.209-70 Product removal from Qualified Products List.
- 1852.209-71 Limitation of future contracting.
- 1852.209-72 Composition of the contractor.
- 1852.210-70 Brand name or equal.
- 1852.211-70 Packaging, handling, and transportation.
- 1852.212-70 Notice of delay.
- 1852.212-74 Period of performance.
- 1852.213-70 Offeror Representations and Certifications—Other Than Commercial Items.
- 1852.213-71 Evaluation—Other Than Commercial Items.
- 1852.214-70 Caution to offerors furnishing descriptive literature.
- 1852.214-71 Grouping for aggregate award.
- 1852.214-72 Full quantities.
- 1852.215-77 Preproposal/pre-bid conference.
- 1852.215-78 Make or buy program requirements.
- 1852.215-79 Price adjustment for “Make-or-Buy” changes.
- 1852.215-81 Proposal page limitations.
- 1852.215-84 Ombudsman.
- 1852.216-73 Estimated cost and cost sharing.
- 1852.216-74 Estimated cost and fixed fee.
- 1852.216-75 Payment of fixed fee.
- 1852.216-76 Award fee for service contracts.
- 1852.216-77 Award fee for end item contracts.
- 1852.216-78 Firm fixed price.
- 1852.216-80 Task ordering procedure.
- 1852.216-81 Estimated cost.
- 1852.216-83 Fixed price incentive.
- 1852.216-84 Estimated cost and incentive fee.
- 1852.216-85 Estimated cost and award fee.
- 1852.216-87 Submission of vouchers for payment.
- 1852.216-88 Performance incentive.
- 1852.216-89 Assignment and release forms.
- 1852.217-70 Property administration and reporting.
- 1852.217-71 Phased acquisition using down-selection procedures.
- 1852.217-72 Phased acquisition using progressive competition down-selection procedures.
- 1852.219-73 Small business subcontracting plan.
- 1852.219-74 Use of Rural Area Small Businesses.
- 1852.219-75 Small business subcontracting reporting.
- 1852.219-76 NASA 8 percent goal.
- 1852.219-77 NASA Mentor-Protégé program.
- 1852.219-79 Mentor requirements and evaluation.
- 1852.219-80 Limitation on subcontracting—SBIR Phase I Program.
- 1852.219-81 Limitation on subcontracting—SBIR Phase II program.
- 1852.219-82 Limitation on subcontracting—STTR program.
- 1852.219-83 Limitation of the principal investigator—SBIR program.
- 1852.219-84 Limitation of the principal investigator—STTR program.
- 1852.219-85 Conditions for final payment—SBIR and STTR contracts.
- 1852.223-70 Safety and health.
- 1852.223-71 Frequency authorization.
- 1852.223-72 Safety and Health (Short Form).
- 1852.223-73 Safety and health plan.
- 1852.223-74 Drug- and alcohol-free workforce.
- 1852.223-75 Major breach of safety or security.
- 1852.223-76 Federal Automotive Statistical Tool Reporting.
- 1852.225-8 Duty-free entry of space articles.
- 1852.225-70 Export Licenses.
- 1852.225-72 [Reserved]
- 1852.227-11 Patent Rights—Retention by the Contractor (Short Form).
- 1852.227-14 Rights in data—General.
- 1852.227-17 Rights in data—Special works.
- 1852.227-19 Commercial computer software—Restricted rights.
- 1852.227-70 New technology.
- 1852.227-71 Requests for waiver of rights to inventions.
- 1852.227-72 Designation of new technology representative and patent representative.
- 1852.227-84 Patent rights clauses.
- 1852.227-85 Invention reporting and rights—Foreign.
- 1852.227-86 Commercial computer software—Licensing.
- 1852.228-70 Aircraft ground and flight risk.
- 1852.228-71 Aircraft flight risks.
- 1852.228-72 Cross-waiver of liability for space shuttle services.
- 1852.228-73 Bid bond.

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- 1852.228-75 Minimum insurance coverage.
1852.228-76 Cross-waiver of liability for Space Station Activities.
1852.228-78 Cross-waiver of liability for NASA Expendable Launch Vehicle launches.
1852.228-80 Insurance—Immunity From Tort Liability.
1852.228-81 Insurance—Partial Immunity From Tort Liability.
1852.228-82 Insurance—Total Immunity From Tort Liability.
1852.231-70 Precontract costs.
1852.231-71 Determination of compensation reasonableness.
1852.232-70 NASA Modification of FAR 52.232-12.
1852.232-77 Limitation of funds (Fixed-Price Contract).
1852.232-79 Payment for on-site preparatory costs.
1852.232-81 Contract funding.
1852.232-82 Submission of requests for progress payments.
1852.233-70 Protests to NASA.
1852.234-1 Notice of Earned Value Management System.
1852.234-2 Earned Value Management System.
1852.235-70 Center for AeroSpace Information.
1852.235-71 Key personnel and facilities.
1852.235-72 Instructions for responding to NASA Research Announcements.
1852.235-73 Final scientific and technical reports.
1852.235-74 Additional reports of work—research and development.
1852.236-71 Additive or deductive items.
1852.236-72 Bids with unit prices.
1852.236-73 Hurricane plan.
1852.236-74 Magnitude of requirement.
1852.236-75 Partnering for construction contracts.
1852.237-70 Emergency evacuation procedures.
1852.237-71 Pension portability.
1852.237-72 Access to Sensitive Information.
1852.237-73 Release of sensitive information.
1852.239-70 Alternate delivery points.
1852.241-70 Renewal of contract.
1852.242-70 Technical direction.
1852.242-71 Travel outside of the United States.
1852.242-72 Observance of legal holidays.
1852.242-73 NASA contractor financial management reporting.
1852.242-78 Emergency medical services and evacuation.
1852.243-70 Engineering change proposals.
1852.243-71 Shared savings.
1852.243-72 Equitable adjustments.
1852.244-70 Geographic participation in the aerospace program.
1852.245-70 Contractor requests for government-owned equipment.
1852.245-71 Installation-accountable government property.
1852.245-72 Liability for Government property furnished for repair or other services.
1852.245-73 Financial reporting of NASA property in the custody of contractors.
1852.245-74 Contractor accountable on-site Government property.
1852.245-75 Title to equipment.
1852.245-76 List of Government-furnished property.
1852.245-77 List of installation-accountable property and services.
1852.245-79 Use of Government-owned property.
1852.245-80 Use of Government production and research property on a no-charge basis.
1852.246-70 Mission Critical Space System Personnel Reliability Program.
1852.246-71 Government contract quality assurance functions.
1852.246-72 Material Inspection and Receiving Report.
1852.246-73 Human space flight item.
1852.247-71 Protection of the Florida manatee.
1852.247-72 Advance notice of shipment.
1852.247-73 Bills of Lading.
1852.249-72 Termination (utilities).
- Subpart 1852.3—Provision and Clause Matrix**
- 1852.300 Scope of subpart.
1852.301 Solicitation provisions and contract clauses (Matrix).
- AUTHORITY: 42 U.S.C. 2473 (c)(1).
SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.
- 1852.000 Scope of part.**
This part, in conjunction with FAR Part 52—
(a) Sets forth the provisions and clauses prescribed in the NFS,
(b) Gives instructions for their use, and
(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).
[61 FR 40547, Aug. 5, 1996]

Subpart 1852.2—Texts of Provisions and Clauses

1852.203-70 Display of Inspector General Hotline Posters.

As prescribed in 1803.7001, insert the following clause:

DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS (JUN 2001)

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546-0001, (202) 358-1220.

[66 FR 29727, June 1, 2001]

1852.204-75 Security classification requirements.

As prescribed in 1804.404-70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254].

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.204-76 Security requirements for unclassified information technology resources.

As prescribed in 1804.470-4(a), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (MAY 2007)

(a) The Contractor shall be responsible for information and information technology (IT) security when—

(1) The Contractor or its subcontractors must obtain physical or electronic (i.e., authentication level 2 and above as defined in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-63, Electronic Authentication Guideline) ac-

cess to NASA's computer systems, networks, or IT infrastructure; or

(2) Information categorized as low, moderate, or high by the Federal Information Processing Standards (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems is stored, generated, processed, or exchanged by NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

(b) IT Security Requirements.

(1) Within 30 days after contract award, a Contractor shall submit to the Contracting Officer for NASA approval an IT Security Plan, Risk Assessment, and FIPS 199, Standards for Security Categorization of Federal Information and Information Systems, Assessment. These plans and assessments, including annual updates shall be incorporated into the contract as compliance documents.

(i) The IT system security plan shall be prepared consistent, in form and content, with NIST SP 800-18, Guide for Developing Security Plans for Federal Information Systems, and any additions/augmentations described in NASA Procedural Requirements (NPR) 2810, Security of Information Technology. The security plan shall identify and document appropriate IT security controls consistent with the sensitivity of the information and the requirements of Federal Information Processing Standards (FIPS) 200, Recommended Security Controls for Federal Information Systems. The plan shall be reviewed and updated in accordance with NIST SP 800-26, Security Self-Assessment Guide for Information Technology Systems, and FIPS 200, on a yearly basis.

(ii) The risk assessment shall be prepared consistent, in form and content, with NIST SP 800-30, Risk Management Guide for Information Technology Systems, and any additions/augmentations described in NPR 2810. The risk assessment shall be updated on a yearly basis.

(iii) The FIPS 199 assessment shall identify all information types as well as the "high water mark," as defined in FIPS 199, of the processed, stored, or transmitted information necessary to fulfill the contractual requirements.

(2) The Contractor shall produce contingency plans consistent, in form and content, with NIST SP 800-34, Contingency Planning Guide for Information Technology Systems, and any additions/augmentations described in NPR 2810. The Contractor shall perform yearly "Classroom Exercises," "Functional Exercises," shall be coordinated with the Center CIOs and be conducted once every three years, with the first conducted within the first two years of contract award. These exercises are defined and described in NIST SP 800-34.

(3) The Contractor shall ensure coordination of its incident response team with the NASA Incident Response Center (NASIRC) and the NASA Security Operations Center, ensuring that incidents are reported consistent with NIST SP 800-61, Computer Security Incident Reporting Guide, and the United States Computer Emergency Readiness Team's (US-CERT) Concept of Operations for reporting security incidents. Specifically, any confirmed incident of a system containing NASA data or controlling NASA assets shall be reported to NASIRC within one hour that results in unauthorized access, loss or modification of NASA data, or denial of service affecting the availability of NASA data.

(4) The Contractor shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPR 2810 requirements. The Contractor may use Web-based training available from NASA to meet this requirement.

(5) The Contractor shall provide NASA, including the NASA Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out IT security inspection, investigation, and/or audits to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA information or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime. To facilitate mandatory reviews, the Contractor shall ensure appropriate compartmentalization of NASA information, stored and/or processed, either by information systems in direct support of the contract or that are incidental to the contract.

(6) The Contractor shall ensure that system administrators who perform tasks that have a material impact on IT security and operations demonstrate knowledge appropriate to those tasks. Knowledge is demonstrated through the NASA System Administrator Security Certification Program. A system administrator is one who provides IT services (including network services, file storage, and/or web services) to someone other than themselves and takes or assumes the responsibility for the security and administrative controls of that service. Within 30 days after contract award, the Contractor shall provide to the Contracting Officer a list of all system administrator positions and personnel filling those positions, along with a schedule that ensures certification of all personnel within 90 days after contract award. Additionally, the Contractor should report all personnel changes which impact system administrator positions within 5 days

of the personnel change and ensure these individuals obtain System Administrator certification within 90 days after the change.

(7) The Contractor shall ensure that NASA's Sensitive But Unclassified (SBU) information as defined in NPR 1600.1, NASA Security Program Procedural Requirements, which includes privacy information, is encrypted in storage and transmission.

(8) When the Contractor is located at a NASA Center or installation or is using NASA IP address space, the Contractor shall—

(i) Submit requests for non-NASA provided external Internet connections to the Contracting Officer for approval by the Network Security Configuration Control Board (NSCCB);

(ii) Comply with the NASA CIO metrics including patch management, operating systems and application configuration guidelines, vulnerability scanning, incident reporting, system administrator certification, and security training; and

(iii) Utilize the NASA Public Key Infrastructure (PKI) for all encrypted communication or non-repudiation requirements within NASA when secure email capability is required.

(c) Physical and Logical Access Requirements.

(1) Contractor personnel requiring access to IT systems operated by the Contractor for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPR 2810 and Chapter 4, NPR 1600.1, NASA Security Program Procedural Requirements. NASA shall provide screening, appropriate to the highest risk level, of the IT systems and information accessed, using, as a minimum, National Agency Check with Inquiries (NACI). The Contractor shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after contract award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of NASA, interim access may be granted pending completion of the required investigation and final access determination. For Contractors who will reside on a NASA Center or installation, the security screening required for all required access (e.g., installation, facility, IT, information, etc.) is consolidated to ensure only one investigation is conducted based on the highest risk level. Contractors not residing on a NASA installation will be screened based on their IT access risk level determination only. See NPR 1600.1, Chapter 4.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT-1 has the highest level of risk).

(i) IT-1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT-2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of “level 1” information whose cost to replace exceeds one million dollars.

(iii) IT-3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Contractor for NASA whose function or information has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as established in Chapter 4, NPR 1600.1.

(4) The Contractor may conduct its own screening of individuals requiring privileged access or limited privileged access provided the Contractor can demonstrate to the Contracting Officer that the procedures used by the Contractor are equivalent to NASA’s personnel screening procedures for the risk level assigned for the IT position.

(5) Subject to approval of the Contracting Officer, the Contractor may forgo screening of Contractor personnel for those individuals who have proof of a—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within the last three years that meets or exceeds the screening requirements of the IT position; or

(iii) Screening conducted by the Contractor, within the last three years, that is equivalent to the NASA personnel screening procedures as approved by the Contracting Officer and concurred on by the CCS.

(d) The Contracting Officer may waive the requirements of paragraphs (b) and (c)(1) through (c)(3) upon request of the Contractor. The Contractor shall provide all relevant information requested by the Contracting Officer to support the waiver request.

(e) The Contractor shall contact the Contracting Officer for any documents, information, or forms necessary to comply with the requirements of this clause.

(f) At the completion of the contract, the contractor shall return all NASA information and IT resources provided to the contractor during the performance of the contract and certify that all NASA information has been purged from contractor-owned systems used in the performance of the contract.

(g) The Contractor shall insert this clause, including this paragraph (g), in all subcontracts:

(1) Have physical or electronic access to NASA’s computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, process, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor’s information system.

(End of clause)

[72 FR 26562, May 10, 2007]

1852.208-81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (NOV 2004)

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101-9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term “printing” includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10-³/₄ by 14-¹/₄ inches. A “production unit” is one sheet, size 8-¹/₂×11 inches (215×280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPR 1490.5, NASA Procedural Requirements for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[66 FR 53548, Oct. 23, 2001, as amended at 69 FR 63459, Nov. 2, 2004]

1852.209-70 Product removal from Qualified Products List.

As prescribed in 1809.206-71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DEC 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209-71 Limitation of future contracting.

As prescribed in 1809.507-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507-2:

LIMITATION OF FUTURE CONTRACTING (DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective

offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209-72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DEC 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.210-70 Brand name or equal.

As prescribed in 1810.011-70(a), insert the following provision:

BRAND NAME OR EQUAL (DEC 1988)

(a) As used in this provision, "brand name" means identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a "brand

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name or equal" description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) Caution to Offerors: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991]

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1852.211-70 Packaging, handling, and transportation.

As prescribed in 1811.404-70, insert the following clause:

PACKAGING, HANDLING, AND TRANSPORTATION
(SEPT 2005)

(a) The Contractor shall comply with NASA Procedural Requirements (NPR) 6000.1, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components", as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[65 FR 37062, June 13, 2000, as amended at 70 FR 52941, Sept. 6, 2005]

1852.212-70 Notice of delay.

As prescribed at 1812.104-70(a), insert the following clause:

NOTICE OF DELAY (DEC 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

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(End of clause)

1852.212-74 Period of performance.

As prescribed in 1812.104-70(e), insert the following clause:

PERIOD OF PERFORMANCE (DEC 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.213-70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302-570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS (JUL 2004)

(a) Definitions. As used in this provision—
“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) Taxpayer Identification Number (TIN).

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
 - Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
 - Offeror is an agency or instrumentality of a foreign government;
 - Offeror is an agency or instrumentality of the Federal Government.

- (4) Type of organization.
 - Sole proprietorship;
 - Partnership;
 - Corporate entity (not tax-exempt);
 - Corporate entity (tax-exempt);
 - Government entity (Federal, State, or local);
 - Foreign government;
 - International organization per 26 CFR 1.6049-4;
 - Other _____.

(5) Common parent.

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name _____.

TIN _____.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it is, is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness

Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of employees	Average annual gross revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less.
<input type="checkbox"/> 51-100	<input type="checkbox"/> \$1,000,001-\$2 million.
<input type="checkbox"/> 101-250	<input type="checkbox"/> \$2,000,001-\$3.5 million.
<input type="checkbox"/> 251-500	<input type="checkbox"/> \$3,500,001-\$5 million.
<input type="checkbox"/> 501-750	<input type="checkbox"/> \$5,000,001-\$10 million.
<input type="checkbox"/> 751-1000	<input type="checkbox"/> \$10,000,001-\$17 million.
<input type="checkbox"/> Over 1000	<input type="checkbox"/> Over \$17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(7)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed \$25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) [The offeror shall check the category in which its ownership falls]:

- Black American.
- Hispanic American.
- Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [] has, [] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [] has, [] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [] has developed and has on file, [] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It [] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

Line Item No. and Country of Origin

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(f)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act: NAFTA Country or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products. Other Foreign End Products:

Line Item No. and Country of Origin

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (JAN 2004). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

Line Item No.

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(List as necessary)

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (JAN 2004). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line Item No. and Country of Origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (g)(1) any end products being acquired under this solicitation that are included in the List of Products Re-

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quiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at FAR 22.1503(b).]

(1) Listed end products.

Listed End Product and Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

Alternate I (MAR 2004) As prescribed in 1813.302-570(a)(2)(i), add the following paragraph to the end of the basic provision and identify appropriately:

() Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

Alternate II (MAR 2004) As prescribed in 1813.302-570(a)(2)(ii), add the following paragraph to the end of the basic provision and identify appropriately:

() Historically Black College or University and Minority Institution Representation

(1) Definitions. As used in this provision—"Historically black college or university" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the

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term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) Representation. The offeror represents that it—

() is () is not a historically black college or university;

() is () is not a minority institution.

Alternate III (MAR 2004) As prescribed in 1813.302-570(a)(2)(iii), add the following paragraph to the end of the basic provision and identify appropriately:

() Representation of Limited Rights Data and Restricted Computer Software

(1) This solicitation sets forth the work to be performed if a contract award results, and the Government’s known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at FAR 52.227-16, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at FAR 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor’s facility.

(2) As an aid in determining the Government’s need to include Alternate II or Alternate III in the clause at FAR 52.227-14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror’s response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software

and states [offeror check appropriate block]—

() None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

() Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

NOTE: “Limited rights data” and “Restricted computer software” are defined in the contract clause entitled “Rights in Data-General.”

[67 FR 38905, June 6, 2002, as amended at 69 FR 13261, Mar. 22, 2004; 69 FR 44610, July 27, 2004]

1852.213-71 Evaluation—Other Than Commercial Items.

As prescribed in 1813.302-570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS—JUN 2002

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[67 FR 38905, June 6, 2002, as amended at 67 FR 50824, Aug. 6, 2002]

1852.214-70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201-670(a), insert the following provision:

1852.214-71

CAUTION TO OFFERORS FURNISHING
DESCRIPTIVE LITERATURE (DEC 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202-5.]

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214-71 Grouping for Aggregate Award.

As prescribed in 1814.201-670(c), insert the following provision:

GROUPING FOR AGGREGATE AWARD (MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

[Insert the item numbers and/or descriptions].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214-72 Full quantities.

As prescribed in 1814.201-670(b), insert the following provision:

FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

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1852.215-77 Preproposal/pre-bid conference.

As prescribed in 1815.209-70(a), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (DEC 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998]

1852.215-78 Make or buy program requirements.

As prescribed in 1815.408-70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS (FEB 1998)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.407-2. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

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(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 63 FR 32764, June 16, 1998]

1852.215-79 Price adjustment for "Make-or-Buy" changes.

As prescribed in 1815.407-70(b), insert the following clause:

PRICE ADJUSTMENT FOR "MAKE-OR-BUY" CHANGES (DEC 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1852.215-81 Proposal page limitations.

As prescribed in 1815.209-70(d), insert the following provision:

PROPOSAL PAGE LIMITATIONS (FEB 1998)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)

(b) A page is defined as one side of sheet, 8½"×11", with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8½"×11" pages. The metric standard format most closely approximating the described standard 8½"×11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belong-

ing in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998]

1852.215-84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN (OCT 2003)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, _____ [Insert name, address, telephone number, facsimile number, and e-mail address]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail *james.a.balinskas@nasa.gov*. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

Alternate I (JUN 2000). As prescribed in 1815.7003, insert the following paragraph (c):

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(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

[62 FR 3484, Jan. 23, 1997, as amended at 65 FR 38777, June 22, 2000; 68 FR 62023, Oct. 31, 2003]

1852.216-73 Estimated cost and cost sharing.

As prescribed in 1816.307-70(a), insert the following clause:

ESTIMATED COST AND COST SHARING (DEC 1991)

(a) It is estimated that the total cost of performing the work under this contract will be \$ _____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ _____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216-74 Estimated cost and fixed fee.

As prescribed in 1816.307-70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE (DEC 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____.

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(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216-75 Payment of fixed fee.

As prescribed in 1816.307-70(c), insert the following clause:

PAYMENT OF FIXED FEE (DEC 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216-76 Award Fee for service contracts.

As prescribed in 1816.406-70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS (JUN 2000)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Office considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited

to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be re-allocated to future evaluation periods.

(f)(1) Provisional award fee payments [insert "will" or "will not", as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert "will" or "will not", as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

[62 FR 3484, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997; 63 FR 13134, Mar. 18, 1998; 65 FR 38777, June 22, 2000]

1852.216-77 Award fee for end item contracts.

As prescribed in 1816.406-70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS (JUN 2000)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of

the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [identify performance evaluation plan] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [Insert "monthly", or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocation to that period less any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [insert "not" if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [insert applicable cite]). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii)

the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer]*.

(d) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

[62 FR 3485, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997; 65 FR 38778, June 22, 2000]

1852.216-78 Firm fixed price.

As prescribed in 1816.202-70, insert the following clause:

FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is \$ *[Insert the appropriate amount]*.

(End of clause)

[62 FR 3485, Jan. 23, 1997]

1852.216-80 Task ordering procedure.

As prescribed in 1816.506-70, insert the following clause:

TASK ORDERING PROCEDURES (OCT 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in per-

formance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ___ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within ___ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

Alternate I (OCT 1996). As prescribed in 1816.506-70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

- (1) Contract number, task order number, and date of the order.
- (2) Task ceiling price.
- (3) Cost and hours incurred to date for each issued task.
- (4) Costs and hours estimated to complete each issued task.
- (5) Significant issues/problems associated with a task.
- (6) Cost summary of the status of all tasks issued under the contract.

[62 FR 3485, Jan. 23, 1997]

1852.216-81 Estimated cost.

As prescribed in 1816.307-70(d), insert the following clause:

ESTIMATED COST (DEC 1988)

The total estimated cost for complete performance of this contract is \$ _____. [Insert total estimated cost of the contract]. See FAR clause 52.216-11, Cost Contract—No Fee, of this contract.

(End of clause)

[62 FR 3486, Jan. 23, 1997]

1852.216-83 Fixed price incentive.

As prescribed in 1816.406-70(c), insert the following clause:

FIXED PRICE INCENTIVE (OCT 1996)

The target cost of this contract is \$ _____. The Target profit of this contract is \$ _____. The target price (target cost plus target profit) of this contract is \$ _____. [The ceiling price is \$ _____.]

The cost sharing for target cost underruns is: Government _____ percent; Contractor _____ percent.

The cost sharing for target cost overruns is: Government _____ percent; Contractor _____ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216-84 Estimated cost and incentive fee.

As prescribed in 1816.406-70(d), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (OCT 1996)

The target cost of this contract is \$ _____. The target fee of this contract is \$ _____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are \$ _____.

The maximum fee is \$ _____.

The minimum fee is \$ _____.

The cost sharing for cost underruns is: Government _____ percent; Contractor _____ percent.

The cost sharing for cost overruns is: Government _____ percent; Contractor _____ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216-85 Estimated cost and award fee.

As prescribed in 1816.406-70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE (SEP 1993)

The estimated cost of this contract is \$ _____. The maximum available award fee, excluding base fee, if any, is \$ _____. The base fee is \$ _____. Total estimated cost, base fee, and maximum award fee are \$ _____.

(End of clause)

Alternate I (SEP 1993). As prescribed in 1816.405-70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is \$ _____. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [*total potential award fee amount, including any base fee*].

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216-87 Submission of vouchers for payment.

As prescribed in 1816.307-70(e), insert the following clause:

SUBMISSION FOR VOUCHERS FOR PAYMENT
(MAR 1998)

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b)(1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to: [Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer. (c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to: [Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

- (i) Copy 1 NASA Contracting Officer;
- (ii) Copy 2 Auditor;
- (iii) Copy 3 Contractor;
- (iv) Copy 4 Contract administration office;

and
(v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to: [insert the mailing address for submission of fee vouchers] This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[63 FR 15321, Mar. 31, 1998]

1852.216-88 Performance incentive.

As prescribed in 1816.406-70(f), insert the following clause:

PERFORMANCE INCENTIVE (JAN 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) ___ is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of \$ (3) ___ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of \$ (5) ___. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the

final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within [insert number of months or years] after the date of hardware acceptance by the Government, the Contractor will be paid [insert percentage] of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402-270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402-270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216-89 Assignment and release forms.

As prescribed in 1816.307-70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS (JUL 1997)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216-7, Allowable Cost and Payment, and FAR clause 52.216-13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release;

NASA Form 779, Assignee's Release;

NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253-1, Computer Generated Forms.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.217-70 Property administration and reporting.

As prescribed in 1817.7004-7 and 1817.7005-4, insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DEC 2005)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Interagency Purchase Request shall be controlled and accounted for in accordance with the servicing agency's normal procedures. All excess items, however, costing \$500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

[70 FR 74206, Dec. 15, 2005]

1852.217-71 Phased acquisition using down-selection procedures.

As prescribed in 1817.7302(a), insert the following clause:

PHASED ACQUISITION USING DOWN-SELECTION PROCEDURES (MAY 2000)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be synopsisized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity

equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [(insert the specific Phase 1 deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—

Phase 2 synopsis—

Phase 2 proposal requested—

Phase 2 proposal receipt—

Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000]

1852.217-72 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1817.7302(b), insert the following clause:

PHASED ACQUISITION USING PROGRESSIVE COMPETITION DOWN-SELECTION PROCEDURES (MAY 2000)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase

1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of _____ [indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be synopsisized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source to all the material furnished to the Phase 1 contractors that is necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase 2.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

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Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[55 FR 47479, Nov. 14, 1990]

1852.219-75 Small business subcontracting reporting.

As prescribed in 1819.708-70(b), insert the following clause:

SMALL BUSINESS SUBCONTRACTING REPORTING
(MAY 1999)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.

(b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219-9.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25216, May 11, 1999]

1852.219-76 NASA 8 percent goal.

As prescribed in 1819.7003 insert the following clause:

NASA 8 PERCENT GOAL (JUL 1997)

(a) Definitions.

Historically Black Colleges or University, as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

Small disadvantaged business concern, as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000]

1852.219-73 Small business subcontracting plan.

As prescribed in 1819.708-70(a), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN
(MAY 1999)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219-9, "Small Business Subcontracting Plan." The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25215, May 11, 1999]

1852.219-74 Use of rural area small businesses.

As prescribed in 1819.7103, insert the following clause:

USE OF RURAL AREA SMALL BUSINESS (SEP 1990)

(a) Definitions.

Rural area means any county with a population of fewer than twenty thousand individuals.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

Women-owned small business concern, as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219-77 NASA Mentor-Protégé program.

As prescribed in 1819.7219(a), insert the following clause:

NASA MENTOR-PROTÉGÉ PROGRAM (MAY 1999)

(a) Prime contractors, including certain small businesses, are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

(1) Mentor firms, which are large prime contractors with at least one active subcontracting plan or eligible small businesses;

(2) Protégés, which are subcontractors to the prime contractor, include small disadvantaged business concerns, women-owned

small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(3) Mentor-protégé agreements, approved by the NASA Office of Small and Disadvantaged Business Utilization (OSDBU);

(4) In contracts with award fee incentives, potential for payment of additional fee for voluntary participation and successful performance in the Mentor-Protégé Program.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSDBU, Washington, DC 20546, (202) 358-2088, for further information.

(End of clause)

[62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 10572, Mar. 5, 1999; 64 FR 25216, May 11, 1999]

1852.219-79 Mentor requirements and evaluation.

As prescribed in 1819.7219(b), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION
(JUL 1997)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the protégé has met the developmental objectives in the agreement; and

(4) To what extent the firm's participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protégé program manager, NASA Headquarters OSDBU, to include information as outlined in paragraph (b).

(d) The mentor will notify the OSDBU and the contracting officer, in writing, as least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) Mentor and protégé firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the contract. At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments as pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause and exclude mentor or protégé firms from participating in the NASA program. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h).

(End of clause)

[62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

1852.219-80 Limitation on subcontracting—SBIR Phase I program.

As prescribed in 1819.7302(a), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE I PROGRAM (OCT 2006)

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219-81 Limitation on subcontracting—SBIR Phase II program.

As prescribed in 1819.7302(b), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE II PROGRAM (OCT 2006)

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219-82 Limitation on subcontracting—STTR program.

As prescribed in 1819.7302(c), insert the following clause:

LIMITATION ON SUBCONTRACTING—STTR PROGRAM (OCT 2006)

The Contractor shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219-83 Limitation of the principal investigator—SBIR program.

As prescribed in 1819.7302(d), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—SBIR PROGRAM (OCT 2006)

The primary employment of the principal investigator (PI) shall be with the small business concern (SBC)/Contractor during

the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is *(insert name)*.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219-84 Limitation of the principal investigator—STTR program.

As prescribed in 1819.7302(e), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—
STTR PROGRAM (OCT 2006)

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is *(insert name)*.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219-85 Conditions for final payment—SBIR and STTR contracts.

As prescribed in 1819.7302(f), insert the following clause:

CONDITIONS FOR FINAL PAYMENT—SBIR AND
STTR CONTRACTS (OCT 2006)

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;

2. No other Federal funding award has been received for essentially equivalent work performed under this contract;

3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;

4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by the Contracting Officer on *(insert date of approval or modification number)*;

5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;

6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on *(insert date of approval or modification number)*; and

7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on *(insert date of approval or modification number)*.

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 USC, Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.223-70 Safety and health.

As prescribed in 1823.7004(c), insert the following clause:

SAFETY AND HEALTH (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State,

and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of \$25,000 or more, or Close Call (a situation or occurrence with no injury, no damage or only minor damage (less than \$1,000) but possesses the potential to cause any type mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(f)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(g) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (g) and any applicable Schedule provisions and clauses, with appropriate changes of designations of the parties, in all solicitations and subcontracts of every tier, when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(h) The Contractor (or subcontractor or supplier) may exclude the provisions of paragraph (g) from its solicitation(s) and subcontract(s) of every tier when it determines that the clause is not necessary because the application of the OSHA and DOT (if applicable) regulations constitute adequate safety and occupational health protection. When a determination is made to exclude the provisions of paragraph (g) from a solicitation and subcontract, the Contractor must notify and provide the basis for the determination to the Contracting Officer. In subcontracts of every tier above the micro-purchase threshold for which paragraph (g) does not apply, the Contractor (or subcontractor or supplier) shall insert the substance of paragraphs (a), (b), (c), and (f) of this clause.

(i) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(j) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a

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list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

- (1) Written hazardous operating procedures for all hazardous operations; and/or
- (2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991; 58 FR 51142, Sept. 30, 1993; 61 FR 5315, Feb. 12, 1996; 62 FR 14033, Mar. 25, 1997; 65 FR 37060, June 13, 2000; 65 FR 70316, Nov. 22, 2000; 66 FR 18052, Apr. 5, 2001; 67 FR 17016, Apr. 9, 2002]

1852.223-71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DEC 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223-72 Safety and Health (Short Form).

As prescribed in 1823.7001(e), insert the following clause:

SAFETY AND HEALTH (SHORT FORM) (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environ-

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ment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the Changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (d) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that exceed the micro-purchase threshold.

(End of clause)

[66 FR 18052, Apr. 5, 2001, as amended at 67 FR 17017, Apr. 9, 2002]

1852.223-73 Safety and Health Plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (NOV 2004)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPR 8715.3, NASA Safety Manual, Appendices). The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) When applicable, the plan shall address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), and high-value equipment and property.

(c) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts that contain one or more of the following conditions:

(1) The work will be conducted completely or partly on premises owned or controlled by the government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazards warrants use of the clause.

(d) This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

Alternate I (NOV 2004) As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan (see NPR 8715.3, NASA Safety Manual, Appendices). The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan

shall make the bidder ineligible for the award of a contract.

[66 FR 48361, Sept. 20, 2001, as amended at 67 FR 17017, Apr. 9, 2002; 69 FR 63459, Nov. 2, 2004]

1852.223-74 Drug- and alcohol-free workforce.

As prescribed in 1823.570-2, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (MAR 1996)

(a) *Definitions.* As used in this clause the terms "employee," "controlled substance," "employee in a sensitive position," and "use, in violation of applicable law or Federal regulation, of alcohol" are as defined in 48 CFR 1823.570-2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug Testing Programs," in which references to "DOT" shall be read as "NASA", and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in

a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[61 FR 7226, Feb. 27, 1996, as amended at 69 FR 60968, Oct. 14, 2004]

1852.223-75 Major breach of safety or security.

As prescribed in 1823.7001(d), insert the following clause:

MAJOR BREACH OF SAFETY OR SECURITY (FEB 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

Alternate I (FEB 2006) As prescribed in 1823.7001(d)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(End of clause)

[65 FR 37061, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18053, Apr. 5, 2001; 67 FR 7618, Feb. 20, 2002; 71 FR 8989, Feb. 22, 2006]

1852.223-76 Federal Automotive Statistical Tool Reporting.

As prescribed at 1823.271 and 1851.205, insert the following clause:

FEDERAL AUTOMOTIVE STATISTICAL TOOL
REPORTING (JUL 2003)

If authorized to operate Government-owned or -leased vehicles, including inter-agency fleet management system (IFMS) vehicles or related services in performance of this contract, the Contractor shall report the data describing vehicle usage required by the Federal Automotive Statistical Tool (FAST) by October 15 of each year. FAST is accessed through <http://fastweb.inel.gov/>.

(End of clause)

[68 FR 43334, July 22, 2003]

1852.225-8 Duty-free entry of space articles.

As prescribed in 1825.1101(e), add the following paragraph (k) to the basic clause at FAR 52.225-8:

(k) The following supplies will be given duty-free entry:
[Insert the supplies that are to be accorded duty-free entry.]

(End of addition)

[65 FR 10033, Feb. 25, 2000]

1852.225-70 Export Licenses.

As prescribed in 1825.1103-70(b), insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, and the Export Administration Regulations (EAR), 15 CFR Parts 730-799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

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(End of clause)

Alternate I (FEB 2000). As prescribed in 1825.1103-70(b), add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[65 FR 6916, Feb. 11, 2000, as amended at 65 FR 10033, Feb. 25, 2000]

1852.225-72 [Reserved]

1852.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.303-70(a), modify the clause at FAR 52.227-11 by adding the following subparagraph (5) to paragraph (c) of the basic clause; adding the following subparagraph (5) to paragraph (f); and using the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(c)(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.

(End of addition)

(f)(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file,

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by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(g)(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

[67 FR 30604, May 7, 2002]

1852.227-14 Rights in data—General.

As prescribed in 1827.409(a), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227-14:

(3)(i) The Contractor agrees not to establish claims to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert".

(End of addition)

[55 FR 27089, June 29, 1990, as amended at 60 FR 47312, Sept. 12, 1995; 62 FR 36734, July 9, 1997]

1852.227-17 Rights in data—Special works.

As prescribed in 1827.409(i), add the following paragraph (f) to the basic clause at FAR 52.227-17:

(f) Whenever the words "establish" and "establishment" are used in this clause, with reference to a claim to copyright, they shall be construed to mean "assert" and "assertion", respectively.

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(End of addition)

[60 FR 47312, Sept. 12, 1995. Redesignated at 61 FR 5315, Feb. 12, 1996, as amended at 62 FR 36734, July 9, 1997]

1852.227-19 Commercial computer software—Restricted rights.

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227-19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227-19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990, as amended at 55 FR 47480, Nov. 14, 1990; 55 FR 53153, Dec. 27, 1990; 62 FR 36734, July 9, 1997]

1852.227-70 New technology.

As prescribed in 1827.303-70(b), insert the following clause:

NEW TECHNOLOGY (NOV 1998)

(a) *Definitions.*

Administrator, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Contract, as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of par-

ties, or subcontract executed or entered into thereunder.

Made, as used in this clause, means conception or first actual reduction to practice; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Nonprofit organization, as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

Small business firm, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

Subject invention, as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be

protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called “the Act”), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Con-

tractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.* (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, non-transferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor’s license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor’s business to which the invention pertains.

(2) The Contractor’s domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a

written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to section 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the

Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit

organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989; 60 FR 40521, Aug. 9, 1995; 62 FR 36734, July 9, 1997; 63 FR 63209, Nov. 12, 1998; 67 FR 30604, May 7, 2002]

1852.227-71 Requests for waiver of rights to inventions.

As prescribed in 1827.30-70(c), insert the following provision in all solicitations that include the clause at 1852.227-70, New Technology:

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 1984)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will

recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997]

1852.227-72 Designation of new technology representative and patent representative.

As prescribed in 1827.303-70(d), insert the following clause:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JUL 1997)

(a) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights—Retention by the Contractor (Short Form)," whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office code	Address (including zip code)
	New Technology Representative Patent Representative	

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause

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or "Patent Rights—Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305-370 of the NASA FAR Supplement.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.227-84 Patent rights clauses.

The contracting officer shall insert the following provision as prescribed in 1827.303-70(e):

PATENT RIGHTS CLAUSES (DEC 1989)

This solicitation contains the patent rights clauses of FAR 52.227-11 (as modified by the NFS) and NFS 1852.227-70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227-70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227-11 shall not apply.

(End of provision)

[54 FR 53631, Dec. 29, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227-85 Invention reporting and rights—Foreign.

As prescribed in 1827.303-70(f), insert the following clause:

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 1986)

(a) As used in this clause, the term "invention" means any invention, discovery or improvement, and "made" means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the

world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227-86 Commercial computer software—Licensing.

As prescribed in 1827.409-70, insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—LICENSING (DEC 1987)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the

NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraph (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2) (i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer

software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in paragraphs (d) (2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in paragraphs (d) (2), (3), and (4) of this clause.

End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 62 FR 36735, July 9, 1997]

1852.228-70 Aircraft ground and flight risk.

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other non-conventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incidental to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (OCT 1996)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Con-

tractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not

been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first \$1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for the first \$1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable

wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or

destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

[61 FR 55772, Oct. 29, 1996]

1852.228-71 Aircraft flight risks.

(a) As prescribed in 1828.311-2, insert the following clause:

AIRCRAFT FLIGHT RISKS (DEC 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes any aircraft, whether furnished by the Contractor under this contract (either before or after

Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds \$100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 61 FR 55774, Oct. 29, 1996]

1852.228-72 Cross-waiver of liability for space shuttle services.

As prescribed in 1828.371 (b) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES (SEP 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to Contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Contractors* and *Subcontractors* include suppliers of any kind.

(2) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) *Party* means a person or entity that signs an agreement involving a Space Shuttle service;

(4) *Payload* means all property to be flown or used on or in the Space Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

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(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraph (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

- (i) Any party other than the Government;
- (ii) A related entity of any party other than the Government; and
- (iii) The employees of any of the entities identified in (c)(1)(i) and (c)(1)(ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protection Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this waiver of liability shall not be applicable to:

- (i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);
- (ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
- (iii) Claims for damage caused by willful misconduct; and
- (iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

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(End of clause)

[59 FR 65730, Dec. 21, 1994]

1852.228-73 Bid bond.

As prescribed in 1828.101-70, insert the following provision:

BID BOND (OCT 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.228-1, in the amount of twenty percent (20%) of the bid price, or \$3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228-75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least \$500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

“The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy.”

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228-76 Cross-waiver of liability for space station activities.

As prescribed in 1828.371(d) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES (DEC 1994)

(a) The Intergovernmental Agreement for the Space Station contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this clause is to extend this cross-waiver requirement to Contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) *Launch Vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) *Partner State* means each contracting party for which the “Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station” (the “Intergovernmental Agreement”) has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State.

The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA) and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified to the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) *Payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(5) *Protected Space Operations* means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this contract. “Protected Space Operations” also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. “Protected Space Operations” excludes activities on Earth which are conducted on return from the Space Station to develop further a payload’s product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A Partner State’s Contractors or subcontractors at any tier;

(ii) A Partner State’s users or customers at any tier; or

(iii) A Contractor or subcontractor of a Partner States’s user or customer at any tier.

(7) *Contractors* and *Subcontractors* include suppliers of any kind.

(c)(1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The

cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(i) Any Partner State other than the United States;

(ii) A related entity of any Partner State other than the United States; and

(iii) The employee of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[59 FR 65730, Dec. 21, 1994]

1852.228-78 Cross-waiver of liability for NASA expendable launch vehicle launches.

As prescribed in 1828.371 (c) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES (SEP 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving ELV launches are required to contain broad cross-

waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Contractors* and *Subcontractors* include suppliers of any kind.

(2) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) *Party* means a person or entity that signs an agreement involving an ELV launch;

(4) *Payload* means all property to be flown or used on or in the ELV; and

(5) *Protected Space Operations* means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; and

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the persons, entity, or property

damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;
 (ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

(End of clause)

[59 FR 56731, Dec. 21, 1994]

1852.228-80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311-270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY
 (SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as

a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, and the associated NFS clause 1852.228-81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

[65 FR 54440, Sept. 8, 2000]

1852.228-81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311-270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT
 LIABILITY (SEP 2000)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228-7, Insurance—Liability to Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228-7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.228-82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311-270(d), insert the following clause:

1852.231-70

INSURANCE—TOTAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.231-70 Precontract costs.

As prescribed in 1831.205-70, insert the following clause:

PRECONTRACT COSTS (JUN 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed \$ _____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[60 FR 29505, June 5, 1995]

1852.231-71 Determination of compensation reasonableness.

As prescribed at 1831.205-671, insert the following provision.

DETERMINATION OF COMPENSATION REASONABLENESS (MAR 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of

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labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222-46, "Evaluation of Compensation for Professional Employees."

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fail within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of \$500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

[62 FR 4474, Jan. 30, 1997]

1852.232-70 NASA modification of FAR 52.232-12.

As prescribed at 1832.412-70, make the following modifications:

NASA MODIFICATION OF FAR 52.232-12, (MAR 1998)

(a) Basic Clause. (1) In paragraph (e), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed \$ _____ at any time outstanding. In addition. * * *."

(2) In paragraph (m)(1), delete "in the form prescribed by the administering office" and substitute "and Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation."

(b) Alternate II (if incorporated in the contract). In paragraph (e), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed \$ _____ at any time outstanding. In addition. * * *."

(c) Alternate V (if incorporated in the contract). (1) Substitute the following for paragraph (b): "(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved

in writing by the administering contracting office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in Part 31, or subpart 1831.2."

(2) In paragraph (d), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed \$ ___ at any time outstanding. In addition. * * *."

(3) In paragraph (j)(1), insert between "statements," and "and" "together with Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation"

(4) If this is a Phase I contract awarded under the SBIR or STTR programs, delete paragraph (a) and substitute the following: "(a) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked "Small Business Innovation Research Contract" or "Small Business Technology Transfer Contract," as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments."

(End of clause)

[63 FR 14040, Mar. 24, 1998]

1852.232-77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705-270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items ___ through ___, the sum of \$ ___ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date	Amounts
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(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until ___.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period

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as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

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

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

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

(End of clause)

1852.232-79 Payment for on-site preparatory costs.

As prescribed in 1832.111-70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS
(SEP 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be pro-

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rated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232-81 Contract funding.

As prescribed in 1832.705-270(b), insert the following clause:

CONTRACT FUNDING (JUN 1990)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is \$ _____. This allotment is for [Insert applicable item number(s), task(s), or work description] _____ and covers the following estimated period of performance: _____.

(b) An additional amount of \$ _____ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 57 FR 40856, Sept. 8, 1992]

1852.232-82 Submission of requests for progress payments.

As prescribed in 1832.502-470, insert the following clause:

SUBMISSION OF REQUESTS FOR PROGRESS
PAYMENTS (MAR 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233-70 Protests to NASA.

As prescribed in 1833.106-70, insert the following provision:

PROTESTS TO NASA (OCT 2002)

Potential bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33)

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directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Assistant Administrator for Procurement, NASA Code H, Washington, DC 20546-0001.

[62 FR 11108, Mar. 11, 1997, as amended at 67 FR 61519, Oct. 1, 2002]

1852.234-1 Notice of Earned Value Management System.

As prescribed in 1834.203-70(a), insert the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 Standard, Earned Value Management Systems.

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines in ANSI/EIA-748;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Describe how the offeror will ensure EVMS compliance for each subcontractor subject to the flowdown requirement in paragraph (c) whose EVMS has not been recognized by the Cognizant Federal Agency as compliant according to paragraph (a);

(vi) Provide documentation describing the process and results, including Government participation, of any third-party or self-evaluation of the system's compliance with the EVMS guidelines; and

(vii) If the value of the offeror's proposal, including options, is \$50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. This schedule should include progress assistance visits, the first visit occurring no later than 30 days

after contract award, and a compliance review as soon as practicable. The Department of Defense Earned Value Management Implementation Guide (<https://acc.dau.mil/CommunityBrowser.aspx?id=19557>) outlines the requirements for conducting a progress assistance visit and validation compliance review.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's EVMS implementation plan prior to contract award.

(c) The offeror shall identify in its offer the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the EVMS requirement. Prior to contract award, the offeror and NASA shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision.

(End of provision)

[71 FR 66121, Nov. 13, 2006]

1852.234-2 Earned Value Management System.

As prescribed in 1834.203-70(b) insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that has been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines specified in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 Standard, Industry Guidelines for Earned Value Management Systems (current version at the time of award) to manage this contract; and

(2) Earned Value Management procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) required by the contract.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA-748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its

plan to obtain compliance/validation. The Contractor shall follow and implement the approved compliance/validation plan in a timely fashion. The Government will conduct a Compliance Review to assess the contractor's compliance with its plan, and if the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies identified as a result of the compliance review within a reasonable time, the Contracting Officer may take remedial action, that may include, but is not limited to, a reduction in fee.

(c) The Government will conduct Integrated Baseline Reviews (IBRs). Such reviews shall be scheduled and conducted as early as practicable, and if a pre-award IBR has not been conducted, a post-award IBR should be conducted within 180 calendar days after contract award, or the exercise of significant contract options, or within 60 calendar days after distribution of a supplemental agreement that implements a significant funding realignment or effects a significant change in contractual requirements (e.g., incorporation of major modifications). The objective of IBRs is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the Cognizant Federal Agency, Contractor proposed EVMS changes require approval of the Cognizant Federal Agency prior to implementation. The Cognizant Federal Agency shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the Cognizant Federal Agency, the Contractor shall disclose EVMS changes to the Cognizant Federal Agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the Contractor's EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause, and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR required by the contract through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall be responsible for ensuring that its subcontractors, identified below, comply with the EVMS requirements of this clause as follows:

(1) For subcontracts with an estimated dollar value of \$50M or more, the following subcontractors shall comply with the requirements of this clause.

(Contracting Officer to insert names of subcontractors or subcontracted effort).

(2) For subcontracts with an estimated dollar value of less than \$50M, the following subcontractors shall comply with the requirements of this clause except for the requirement in paragraph (b), if applicable, to obtain compliance/validation.

(Contracting Officer to insert names of subcontractors or subcontracted effort).

(g) If the contractor identifies a need to deviate from the agreed baseline by working against an Over Target Baseline (OTB) or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer a request for approval to begin implementation of an OTB or OTS. This request shall include a top-level projection of cost and/or schedule growth, whether or not performance variances will be retained, and a schedule of implementation for the reprogramming adjustment. The Government will approve or deny the request within 30 calendar days after receipt of the request. Failure of the Government to respond within this 30-day period constitutes approval of the request. Approval of the deviation request does not constitute a change, or the basis for a change, to the negotiated cost or price of this contract, or the estimated cost of any undefinitized contract actions.

(End of clause)

Alternate I (NOV 2006). As prescribed in 1834.203-70(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA-748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and

shall take timely action to implement its plan to be compliant with the guidelines. The Government will not formally validate/accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts. The Government will monitor compliance through routine surveillance.

[71 FR 66121, Nov. 13, 2006]

1852.235-70 Center for AeroSpace Information.

As prescribed in 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION (DEC 2006)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (<http://www.sti.nasa.gov>) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a NASA repository and database of research information, which may enhance contract performance.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) Information regarding CASI and the services available can be obtained at the Internet address contained in paragraph (a) of this clause.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 71 FR 71073, Dec. 8, 2006]

1852.235-71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substi-

tutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided*, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235-72 Instructions for responding to NASA Research Announcements.

As prescribed in 1835.070(c), insert the following provision:

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (DEC 2005)

(a) General.

(1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate award instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any proposal from a large business concern that may result in the award of a contract,

which exceeds \$5,000,000 and has subcontracting possibilities should include a small business subcontracting plan in accordance with the clause at FAR 52.219-9, Small Business Subcontracting Plan. (Subcontract plans for contract awards below \$5,000,000, will be negotiated after selection.) Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPR 5800.1).

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) NRA-Specific Items. Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) Transmittal Letter or Prefatory Material.

(i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, non-profit, educational, small business, minority, women-owned, etc;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) Restriction on Use and Disclosure of Proposal Information. Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

NOTICE—RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL INFORMATION

The information (data) contained in [*insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(3) Abstract. Include a concise (200-300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) Project Description.

(i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use

of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described.

(6) Personnel. The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) Facilities and Equipment.

(i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

(8) Proposed Costs (U.S. Proposals Only).

(i) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses;

publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A-21 for educational institutions and A-122 for nonprofit organizations).

(iv) Use of NASA funds—NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(9) Security. Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) Special Matters.

(i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Identify and discuss risk factors and issues throughout the proposal where they are relevant, and your approach to managing these risks.

(iii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) Renewal Proposals.

(1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) Length. Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15-20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments.

(f) Joint Proposals.

(1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) Late Proposals. Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.

(h) Withdrawal. Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) Evaluation Factors

(1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) Evaluation Techniques. Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) Selection for Award.

(1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) Additional Guidelines Applicable to Foreign Proposals and Proposals Including Foreign Participation

(1) NASA welcomes proposals from outside the U.S. However, foreign entities are generally not eligible for funding from NASA. Therefore, unless otherwise noted in the NRA, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included. Proposals from foreign entities and proposals from U.S. entities that include foreign participation must be endorsed by the respective government agency or funding/sponsoring institution in the country from which the foreign entity is proposing. Such endorsement should indicate that the proposal merits careful consideration by NASA, and if the proposal is selected, sufficient funds will be made available to undertake the activity as proposed.

(2) All foreign proposals must be type-written in English and comply with all other submission requirements stated in the NRA. All foreign proposals will undergo the same evaluation and selection process as those originating in the U.S. All proposals must be received before the established closing date. Those received after the closing date will be treated in accordance with paragraph (g) of this provision. Sponsoring foreign government agencies or funding institutions may, in exceptional situations, forward a proposal without endorsement if endorsement is not possible before the announced closing date. In such cases, the NASA sponsoring office should be advised when a decision on endorsement can be expected.

(3) Successful and unsuccessful foreign entities will be contacted directly by the NASA sponsoring office. Copies of these letters will be sent to the foreign sponsor. Should a foreign proposal or a U.S. proposal with foreign participation be selected, NASA's Office of External Relations will arrange with the foreign sponsor for the proposed participation on a no-exchange-of-funds basis, in which NASA and the non-U.S. sponsoring agency or funding institution will each bear the cost of discharging their respective responsibilities.

(4) Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(i) An exchange of letters between NASA and the foreign sponsor; or

(ii) A formal Agency-to-Agency Memorandum of Understanding (MOU).

(m) Cancellation of NRA. NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for canceling the NRA or for anyone's

failure to receive actual notice of cancellation.

[62 FR 4475, Jan. 30, 1997, as amended at 64 FR 48561, Sept. 7, 1999; 65 FR 3153, Jan. 20, 2000; 67 FR 30604, May 7, 2002; 67 FR 61520, Oct. 1, 2002; 69 FR 63460, Nov. 2, 2004; 70 FR 74207, Dec. 15, 2005]

1852.235-73 Final Scientific and Technical Reports.

As prescribed in 1835.070(d) insert the following clause:

FINAL SCIENTIFIC AND TECHNICAL REPORTS
(DEC 2006)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPR 2200.2, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. Electronic formats for submission of reports should be used to the maximum extent practical. Before electronically submitting reports containing scientific and technical information (STI) that is export-controlled or limited or restricted, contact the Contracting Officer to determine the requirements to electronically transmit these forms of STI. If appropriate electronic safeguards are not available at the time of submission, a paper copy or a CD-ROM of the report shall be required. Information regarding appropriate electronic formats for final reports is available at <http://www.sti.nasa.gov> under "Publish STI—Electronic File Formats."

(c) The last page of the final report shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) In addition to the final report submitted to the Contracting Officer, the Contractor shall concurrently provide to the Center STI/Publication Manager and the NASA Center for AeroSpace Information (CASI) a copy of the letter transmitting the final report to the Contracting Officer. The copy of the letter shall be submitted to CASI at the address listed at <http://www.sti.nasa.gov> under the "Get Help" link.

(e) In accordance with paragraph (d) of the Rights in Data—General clause (52.227-14) of this contract, the Contractor may publish, or otherwise disseminate, data produced during the reports required by 1852.235-74 when

included in the contract, without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. Should the Contractor seek to publish or otherwise disseminate the final report, or any additional reports required by 1852.235-74 if applicable, as delivered to NASA under this contract, the Contractor may do so once NASA has completed its document availability authorization review, and availability of the report has been determined.

Alternate I (FEB 2003) As prescribed by 1835.070(d)(1), insert the following as paragraph (e) of the basic clause:

(e) The data resulting from this research activity is "fundamental research" which will be broadly shared within the scientific community. No foreign national access or dissemination restrictions apply to this research activity. The Contractor may publish, release, or otherwise disseminate data produced during the performance of this contract, including the final report, without prior review by NASA for export control or national security purposes. However, NASA retains the right to review the final report to ensure that proprietary information, which may have been provided to the Contractor, is not released without authorization and for consistency with NASA publication standards. Additionally, the Contractor is responsible for reviewing any publication, release, or dissemination of the data for conformance with other restrictions expressly set forth in this contract, and to the extent it receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for compliance with such restrictive markings.

Alternate II (DEC 2005) As prescribed by 1835.070(d)(2), insert the following as paragraph (e) of the basic clause:

(e) Data resulting from this research activity 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 necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor shall not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report and any addi-

tional reports required by 1852.235-74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined.

(f) All publications of any material based on or developed under NASA sponsored projects shall include an acknowledgement similar to the following:

"The material is based upon work supported by the National Aeronautics and Space Administration under Contract Number XXXX."

Except for articles or papers published in scientific, technical or professional journals, the exposition of results from NASA supported research shall also include the following disclaimer:

"Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration."

Alternate III (JAN 2005) As prescribed by 1835.070(d)(3), insert the following as paragraph (e) of the basic clause:

(e) The Contractor's rights in data are defined in FAR 52.227-20, Rights In Data—SBIR Program. The Contractor may publish, or otherwise disseminate, such data without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. In the event the Contractor has established its claim to copyright data produced under this contract and has affixed a copyright notice and acknowledgement of Government sponsorship, or has affixed the SBIR Rights Notice contained in paragraph (d) of FAR 52.227-20, the Government shall comply with such Notices.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 70 FR 2022, Jan. 12, 2005; 70 FR 74207, Dec. 15, 2005; 71 FR 71073, Dec. 8, 2006]

1852.235-74 Additional Reports of Work—Research and Development.

As prescribed in 1835.070(e), insert a clause substantially the same as the following:

ADDITIONAL REPORTS OF WORK—RESEARCH
AND DEVELOPMENT (FEB 2003)

In addition to the final report required under this contract, the Contractor shall submit the following report(s) to the Contracting Officer:

(a) *Monthly progress reports.* The Contractor shall submit separate monthly reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall 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.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. 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.

(c) *Submission dates.* Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within ___ days after the completion of the effort under the contract.

(End of clause)

[68 FR 5232, Feb. 3, 2003]

1852.236-71 Additive or deductive items.

As prescribed in 1836.570(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder

offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of \$100,000, a bidder's base bid of \$85,000, and four successive additives of \$10,000, \$8,000, \$6,000, and \$4,000. In this example, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed \$100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236-72 Bids with unit prices.

As prescribed in 1836.570(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

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(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236-73 Hurricane plan.

As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

- (a) Inspect the area and place all materials possible in a protected location;
- (b) Tie down, or identify and store, all outside equipment and materials;
- (c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and
- (d) Ensure that temporary erosion controls are adequate.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236-74 Magnitude of requirement.

As prescribed in 1836.570(d), insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between \$_____ and \$_____. [Insert the estimated dollar range.]

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236-75 Partnering for construction contracts.

As prescribed in 1836.7004, insert the following clause:

PARTNERING FOR CONSTRUCTION CONTRACTS (AUG 1998)

- (a) The terms "partnering" and "partnership" used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.
- (b) Partnering will be a voluntary commitment mutually agreed upon by at least

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NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[63 FR 44171, Aug. 18, 1998]

1852.237-70 Emergency evacuation procedures.

As prescribed at 1837.110-70(a), insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989; 62 FR 4476, Jan. 30, 1997]

1852.237-71 Pension portability.

As prescribed at 1837.110-70(b), insert the following clause:

PENSION PORTABILITY (JAN 1997)

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed \$2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

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

(End of clause)

[62 FR 4477, Jan. 30, 1997]

1852.237-72 Access to Sensitive Information.

As prescribed in 1837.203-72(a), insert the following clause:

ACCESS TO SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, "sensitive information" refers to information that a 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, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the Contractor agrees to—

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the Contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the Contractor for serious misconduct affecting present responsibility as a government contractor.

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(f) The Contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information

(End of clause)

[70 FR 35555, June 21, 2005]

1852.237-73 Release of sensitive information.

As prescribed in 1837.203-72(b), insert the following clause:

RELEASE OF SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, "sensitive information" refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following: Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237-72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from an-

other source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

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(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

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1852.239-70 Alternate delivery points.

As prescribed in 1839.106-70(a)(1), insert the following clause:

ALTERNATE DELIVERY POINTS (NOV 1993)

(a) The first priority of this contract is to satisfy the anticipated requirements of ___ (identify contracting activity). However, should the actual requirements of ___ (contracting activity) be less than the maximum quantities/values specified in section B of this contract, ___ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are: (List installations and their locations)

(b) The prices of the deliverables in section B are F.O.B. destination to ___ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

Alternate I (NOV 1993). As prescribed in 1839.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[58 FR 59189, Nov. 8, 1993; 58 FR 62556, Nov. 29, 1993, as amended at 62 FR 4477, Jan. 30, 1997; 62 FR 36735, July 9, 1997]

1852.241-70 Renewal of contract.

As prescribed in 48 CFR 1841.501-70, insert the following clause:

RENEWAL OF CONTRACT (DEC 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least ___ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ___ years.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991. Redesignated and amended at 60 FR 16063, Mar. 29, 1995; 62 FR 4477, Jan. 30, 1997]

1852.242-70 Technical direction.

As prescribed in 1842.271, insert the following clause:

TECHNICAL DIRECTION (SEP 1993)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of

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certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) Constitutes a basis for any increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) of this clause, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the requirements of the contract and does not constitute a change under the Changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the Contractor and the Contracting Officer to agree that the instruction or direction is both within the requirements of the contract and does not constitute a change under the Changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 32119, July 15, 1991; 59 FR 21668, Apr. 26, 1994; 62 FR 36735, July 9, 1997]

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1852.242-71 Travel outside of the United States.

As prescribed in 1842.7002, insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 56 FR 12460, Mar. 26, 1991]

1852.242-72 Observance of legal holidays.

As prescribed in 1842.7001(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (AUG 1992)

(a) The on-site Government personnel observe the following holidays:

- New Year's Day
- Labor Day
- Martin Luther King, Jr.'s Birthday
- Columbus Day
- President's Birthday
- Veterans Day
- Memorial Day
- Thanksgiving Day
- Independence Day
- Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

Alternate I (SEP 1989). As prescribed in 1842.7001(b), add the following paragraphs (c) and (d) as Alternate I to the clause.

(c) On-site personnel assigned to this contract shall not be granted access to the installation during the holidays in paragraph (a) of the clause, except as follows: the Contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative. If the Contractor's on-site personnel work during a holiday other than those in paragraph (a) of the clause, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.

Alternate II (OCT 2000). As prescribed in 1842.7001(c), add the following as paragraphs (e) and (f) if Alternate I is used, or as paragraphs (c) and (d) if Alternate I is not used. If added as paragraphs (c) and (d), amend the first sentence of paragraph (d) by deleting "(e)" and adding "(c)" in its place.

(e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient onsite personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of this clause, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

[54 FR 39376, Sept. 26, 1989, as amended at 57 FR 40856, Sept. 8, 1992; 62 FR 36735, July 9, 1997; 63 FR 32764, June 16, 1998; 65 FR 58932, Oct. 3, 2000]

1852.242-73 NASA contractor financial management reporting.

As prescribed in 1842.7202, insert the following clause:

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (NOV 2004)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Procedures and Guidelines (NPR) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 65 FR 46628, July 31, 2000; 69 FR 63460, Nov. 2, 2004]

1852.242-78 Emergency Medical Services and Evacuation.

As prescribed in 1842.7003, insert the following clause:

1852.243-70

EMERGENCY MEDICAL SERVICES AND
EVACUATION—APRIL 2001

The Contractor shall, at its own expense, be responsible for making all arrangements for emergency medical services and evacuation, if required, for its employees while performing work under this contract outside the United States or in remote locations in the United States. If necessary and deal with certain emergencies, the Contractor may request the Government to provide medical or evacuation services. If the Government provides such services, the Contractor shall reimburse the Government for the costs incurred.

(End of clause)

[66 FR 18054, Apr. 5, 2001]

1852.243-70 Engineering change proposals.

As prescribed in 1843.205-70(a)(1), insert the following clause, modified to suit contract type:

ENGINEERING CHANGE PROPOSALS (FEB 1998)

(a) Definitions.

“ECP” means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

(b) Either party to the contract may originate ECPs. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a “not-to-exceed” _____ [price or estimated cost] increase or decrease adjustment amount, if any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the Contractor regarding the “not-to-exceed” _____ [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) After submission of a Contractor initiated ECP, the Contracting Officer may require the Contractor to submit the following information:

(1) Cost or pricing data in accordance with FAR 15.403-5 if the proposed change meets the criteria for its submission under FAR 15.403-4; or

(2) Information other than cost or pricing data adequate for Contracting Officer determination of price reasonableness or cost realism. The Contracting Officer reserves the

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right to request additional information if that provided by the Contractor is considered inadequate for that purpose. If the Contractor claims applicability of one of the exceptions to submission of cost or pricing data, it shall cite the exception and provide rationale for its applicability.

(e) If the ECP is initiated by NASA, the Contracting Officer shall specify the cost information requirements, if any.

(End of clause)

Alternate I (JUL 1997). As prescribed in 1843.205-70(a)(2), add the following paragraph (f), modified to suit contract type, to the basic clause:

(f) If the _____ [price or estimated cost] adjustment proposed for any contractor-originated ECP is _____ [insert a percent or dollar amount of the contract price or estimated cost] or less, the ECP shall be executed with no adjustment to the contract _____ [price or estimated cost].

Alternate II (SEPT 1990). As prescribed in 1843.205-70(a)(3), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

[62 FR 14033, Mar. 25, 1997, as amended at 62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997; 63 FR 9966, Feb. 27, 1998; 63 FR 11480, Mar. 9, 1998; 63 FR 17339, Apr. 9, 1998; 67 FR 53549, Oct. 23, 2002]

1852.243-71 Shared savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS (MAR 1997)

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential purpose of services to be provided under the contract.

(b) Definitions:

(1) *Cost savings*, as contemplated by this clause mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this provision, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this provision, Contractor implementation costs, or “implementation costs”, shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this provision, the term Government costs means internal costs of NASA, or any other Government agency, which result directly from development and implementation of the CRP. These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the Cost Reduction Proposal.

(c) General. The Contractor will develop, prepare and submit CRP’s with supporting information as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor shall share in any net cost savings realized from approved and implemented CRPs in accordance with the terms of this clause. The Contractor’s actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact

performance on its contract, including Government and other Contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) Computation of cost savings. The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) Supporting Information. As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract, the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submissions.

(f) Administration.

(1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRP's should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the Contractor may, upon concurrence of the Contracting Officers responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings,

and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in advance of the intended action and affording the Contractor an opportunity for discussion.

(g) Limitations. Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

[62 FR 14033, Mar. 25, 1997]

1852.243-72 Equitable adjustments.

As prescribed in 1843.205-70(b), insert the following clause.

EQUITABLE ADJUSTMENTS (APR 1998)

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the "Suspension of Work" clause (FAR 52.242-14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at

least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces	—	—	10
To first tier subcontractor on work performed by its subcontractors	—	—	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	—

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

[63 FR 17339, Apr. 9, 1998]

1852.244-70 Geographic participation in the aerospace program.

As prescribed in 1844.204-70, insert the following clause:

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of \$100,000 and over.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14034, Mar. 25, 1997]

1852.245-70 Contractor requests for Government-owned equipment.

As prescribed in 1845.106-70(a), insert the following clause:

CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT (JUL 1997)

(a) "Equipment," as used in this clause, means commercially available items capable of stand-alone use, including those to be acquired for incorporation into special test equipment or special tooling.

(b)(1) Upon determination of need for any Government-owned equipment item for performance of this contract, the contractor shall provide to the contracting officer a

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written request justifying the need for the equipment and the reasons why contractor-owned property cannot be used, citing the applicable FAR or contract authority for use of Government-owned equipment. Equipment being acquired as a deliverable end item listed in the contract or as a component for incorporation into a deliverable end item listed in the contract is exempt from this requirement.

(2) The contractor's request shall include a description of the item in sufficient detail to enable the Government to screen its inventories for available equipment or to purchase equipment. For this purpose, the contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, or equivalent format, for each item requested and (ii) forward it through the contracting officer to the Industrial Property Officer at the cognizant NASA installation at least 30 days in advance of the date the contractor intends to acquire the item. Multiple units of identical items may be requested on a single form. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7102. If a certificate of nonavailability is not received within that period, the contractor may proceed to acquire the item, subject to having obtained contracting officer consent, if required, and having complied with any other applicable provisions of this contract.

(c) Contractors who are authorized to conduct their own screening using the NASA Equipment Management System (NEMS) and other Government sources of excess property shall provide the evidence of screening results with their request for contracting officer consent. Requests to purchase based on unsuitability of items found shall include rationale for the determined unsuitability.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245-71 Installation-accountable Government property.

As prescribed in 1845.106-70(b), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY (JUN 1998)

(a) The Government property described in the clause at 1852.245-77, List of Installation-Accountable Property and Services, shall be made available to the contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property. Under this clause, the Government retains accountability for, and title to, the property, and the contractor assumes the following user

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responsibilities: [Insert contractor user responsibilities].

The contractor shall establish and adhere to a system of written procedures for compliance with these user responsibilities. Such procedures must include holding employees liable, when appropriate, for loss, damage, or destruction of Government property.

(b)(1) The official accountable record-keeping, physical inventory, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area;

(ii) The contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area;

(iii) The contractor shall establish a record of the property as required by FAR 45.5 and 1845.5 and furnish to the Industrial Property Officer a DD Form 1149 Requisition and Invoice/Shipping Document (or installation equivalent) to transfer accountability to the Government within 5 working days after receipt of the property by the contractor. The contractor is accountable for all contractor-acquired property until the property is transferred to the Government's accountability.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use require advance approval of the contracting officer and notification of the SEMO. The contractor shall assume accountability and financial reporting responsibility for such property. The contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR Part 45.5 until its return to the installation.

(2) After transfer of accountability to the Government, the contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the contracting officer.

(End of clause)

Alternate I (NOV 2004) As prescribed in 1845.106-70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

(i) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 63 FR 32764, June 16, 1998; 69 FR 63460, Nov. 2, 2004]

1852.245-72 Liability for Government property furnished for repair or other services.

As prescribed in 1845.106-70(c), insert the following clause:

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (MAR 1989)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing: (1) Caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and cov-

erage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245-73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.106-70(d), insert the following clause:

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (OCT 2003)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with the provisions of 1845.505-14, the instructions on the form, subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15.

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Some activity may be estimated for the month of September, if necessary, to ensure the NF 1018 is received when due. However, contractors procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533 Contractor Financial Management Report) cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(2) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with 1845.505-14 and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with (b)(1) through (3) of this clause.

(End of clause)

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 68 FR 62026, Oct. 31, 2003]

1852.245-74 Contractor accountable on-site Government property.

As prescribed in 1845.106-70(e), insert the following clause:

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CONTRACTOR ACCOUNTABLE ON-SITE GOVERNMENT PROPERTY (MAR 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

- (1) Use economic order quantity (EOQ) methods for routine stock replenishment;
- (2) Utilize the Federal Cataloging System;
- (3) Comply with shelf-life requirements;
- (4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing \$1000 and over, plus that equipment designated as "sensitive";
- (5) Provide for physical inventory of all controlled equipment at least every 3 years;
- (6) Provide for sample inventories of materials plus complete inventories every 5 years;
- (7) Conduct walk-through utilization inspections;
- (8) Screen NEMS before acquiring any equipment costing \$1000 or over, plus equipment designated by the installation as sensitive and costing \$500 and over;
- (9) Support the Equipment Acquisition Document (EAD) process; and
- (10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) of this clause are specified under section F, Deliveries or performance.

(End of clause)

1852.245-75 Title to equipment.

As prescribed in 1845.106-70(f), insert the following clause:

TITLE TO EQUIPMENT (MAR 1989)

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor

with funds provided for conducting research under this contract and having an acquisition cost less than \$ _____ [Insert a dollar value not less than \$5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of \$ _____ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606-5.

(c) Title to the property specified in paragraph (b) of this clause vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) of this clause to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert "None"].

(End of clause)

1852.245-76 List of Government-furnished property.

As prescribed in 1845.106-70(g), insert the following clause:

LIST OF GOVERNMENT-FURNISHED PROPERTY
(OCT 1988)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment _____ [Insert attachment number or "not applicable"] of this contract on a no-charge-for-use basis. The Contractor shall use this property in the performance of this contract at _____ [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under the FAR 52.245 Government property clause of this contract, the Contractor is accountable for the identified property.

Item	Quantity	Acquisition cost	Date to be furnished to the contractor

[Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the Contractor]

(End of clause)

1852.245-77 List of installation-accountable property and services.

As prescribed in 1845.106-70(h), insert the following clause:

LIST OF INSTALLATION-ACCOUNTABLE
PROPERTY AND SERVICES (JUL 1997)

In accordance with the clause at 1852.245-71, Installation-Accountable Government Property, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, in the performance of this contract within the physical borders of the installation which may include buildings and space owned or directly leased by NASA in close proximity to the installation, if so designated by the Contracting Officer.

(a) Office space, work area space, and utilities. Government telephones are available for official purposes only; pay telephones are available for contractor employees for unofficial calls.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available is listed in Attachment ____ [Insert attachment number or "not applicable" if no equipment is provided]. The Government retains accountability for this property under the clause at 1852.245-71, Installation-Accountable Government Property, regardless of its authorized location.

(2) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records as required by the clause at 1852.245-71, Installation-Accountable Government Property.

(3) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

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(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: _____ [Insert the name of the facilities or "None"]

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The user responsibilities of the Contractor are defined in paragraph (a) of the clause at 1852.245-71, Installation-Accountable Government Property.

(End of clause)

[62 FR 36736, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245-79 Use of Government-owned property.

As prescribed in 1845.106-70(i), insert the following provision:

USE OF GOVERNMENT-OWNED PROPERTY (JUL 1997)

(a) The offeror () does, () does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), and NASA FAR Supplement (NFS) 1845.102-71:

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245-9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information

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is not required for property offered by this solicitation.

(b) The offeror () does, () does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement of its inability to obtain facilities as prescribed by FAR 45.302-1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) of this provision), the offer must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5 and 1845.71.

(3) A statement indicating whether or not the costs associated with paragraph (c)(2) of this provision, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

[62 FR 36736, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 63 FR 32764, June 16, 1998]

1852.245-80 Use of Government production and research property on a no-charge basis.

As prescribed in 1845.106-70(k), insert the following clause:

USE OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY ON A NO-CHARGE BASIS (MAR 1989)

In performing this contract, the Contractor is authorized to use on a no-charge, noninterference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

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(End of clause)

1852.246-70 Mission Critical Space System Personnel Reliability Program.

As prescribed in 1846.370(a), insert the following clause:

MISSION CRITICAL SPACE SYSTEM PERSONNEL RELIABILITY PROGRAM (MAR 1997)

(a) In implementation of the Mission Critical Space System Personnel Reliability Program, described in 14 CFR 1214.5, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2) to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be suitable, competent, and reliable in the performance of their assigned duties in accordance with the screening requirements 14 CFR 1214.5. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

[62 FR 14034, Mar. 25, 1997]

1852.246-71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Function	Location
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[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990; 62 FR 14035, Mar. 25, 1997]

1852.246-72 Material inspection and receiving report.

As prescribed in 1846.674, insert the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (AUG 2003)

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in ___ [Insert number of copies, including original] copies, an original and ___ copies [Insert number of copies].

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 60 FR 40521, Aug. 9, 1995; 62 FR 14035, Mar. 25, 1997; 68 FR 45169, Aug. 1, 2003]

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1852.246-73 Human space flight item.

As prescribed in 1845.370(b), insert the following clause:

HUMAN SPACE FLIGHT ITEM (MAR 1997)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

“FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRO-NAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER.”

(End of clause)

[62 FR 14035, Mar. 25, 1997]

1852.247-71 Protection of the Florida manatee.

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (MAR 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (*Trichechus Manatus*) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA’s Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected dis-assembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and ves-sels shall be operated at minimum control-able speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooper-ate with the USFWS by allowing access at reasonable times and places (including ship-board) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transpor-tation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867-5330.

(2) For all other personnel, through the Systems Training and Employee Develop-ment Branch, Code PM-TNG, telephone (407) 867-2737.

(e) The contractor shall incorporate the provisions of this clause in applicable sub-contracts (including vendor deliveries).

(End of clause)

1852.247-72 Advance notice of ship-ment.

As prescribed in 1847.305-70(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

_____[Insert number of work days] work days prior to shipping item(s) ____ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to ____ [Insert individual(s) to re-ceive notification] and to the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.247-73 Bills of Lading.

As prescribed in 1847.305-70(b), insert a clause substantially as follows:

BILLS OF LADING (JUN 2002)

The purpose of this clause is to define when a commercial bill of lading or a gov-ernment bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the in-voice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be com-pleted, signed by an authorized company rep-resentative, and attached to the invoice.

“I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: ____
Destination: ____”.

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(b) *Government Bills of Lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

- (i) Item identification/ description.
- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional Weight.
- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of clause)

[67 FR 38908, June 6, 2002]

1852.249-72 Termination (utilities).

As prescribed in 1849.505-70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

TERMINATION (UTILITIES) (MAR 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

[57 FR 40856, Sept. 8, 1992]

1852.301 Solicitation provisions and contract clauses (Matrix).

PART 1853 [RESERVED]

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 1872 [RESERVED]