''Niagara Falls'', ''NY'' is withdrawn as of September 27, 2012.

[FR Doc. 2012–23819 Filed 9–26–12; 8:45 am]

BILLING CODE 6560–50–P

HEALTH AND HUMAN SERVICES DEPARTMENT

Administration for Children and Families

45 CFR Part 301

State Plan Approval and Grant Procedures

CFR Correction

In Title 45 of the Code of Federal Regulations, Parts 200 to 499, revised as of October 1, 2011, on page 221, in § 301.1 definitions for ''Agent of a Child'' and ''Attorney of a Child'' are added to read as follows:

§ 301.1 General definitions.

* * * * *

Agent of a Child means a caretaker relative having custody of or responsibility for the child.

* * * * *

Attorney of a Child means a licensed lawyer who has entered into an attorney-client relationship with either the child or the child's resident parent to provide legal representation to the child or resident parent related to establishment of paternity, or the establishment, modification, or enforcement of child support. An attorney-client relationship imposes an ethical and fiduciary duty upon the attorney to represent the client's best interests under applicable rules of professional responsibility.

* * * * *

[FR Doc. 2012–23893 Filed 9–26–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 205

Publicizing Contract Actions

CFR Correction

205.470 [Corrected]

In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201—299), revised as of October 1, 2011, on page 38, in section 205.470, the first sentence is corrected by removing ''$1,000,000,000'' and adding, in its place, ''$1,000,000''.

[FR Doc. 2012–23901 Filed 9–26–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 209

Contractor Qualifications

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201–299), revised as of October 1, 2011, on page 55, in section 209.104–70, paragraph (a) is amended by revising the second sentence to read as follows:

209.104–70 Solicitation provisions.

(a) * * * Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror shall be forwarded through agency channels to the address at 209.104–1(g)(i)(C).

* * * * *

[FR Doc. 2012–23905 Filed 9–26–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

Acquisition of Commercial Items

CFR Correction

212.504 [Corrected]

In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201—299), revised as of October 1, 2011, on page 73, in section 212.504, paragraph (a) is corrected by redesignating (iv) through the first paragraph (xvii) as (iii) through (xvi).

[FR Doc. 2012–23917 Filed 9–26–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 227

Patents, Data, and Copyrights; CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201—299), revised as of October 1, 2011, on page 206, in section 227.7102–1, paragraph (c) is added to read as follows:

227.7102–1 Policy.

* * * * *

(c) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data pertaining to the design (10 U.S.C. 7317; 17 U.S.C. 1301(a)(3)).

[FR Doc. 2012–23925 Filed 9–26–12; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1812, 1828, and 1852

RIN 2700–AD55

Cross Waivers of Liability Clauses

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA has adopted, with minor changes, a final rule amending the NASA FAR Supplement (NFS) to consolidate and make changes to three existing cross-waiver of liability contract clauses, and to more closely align the clauses with current mission programs.

DATES: *Effective Date:* October 29, 2012.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, Contract Management Division (Suite 2P77); (202) 358–0592; email: *leigh.pomponio@nasa.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

A proposed rule was published on May 5, 2011 (76 FR 25657) to consolidate NASA's three existing cross-waiver of liability clauses into two clauses and to align the two clauses with Agency mission requirements, consistent with the cross-waiver of liability regulatory authority at 14 CFR part 1266. The regulatory authority at 14 CFR part 1266 was promulgated on February 26, 2008 (73 FR 10143–50). The February 2008 rule established NASA's cross-waiver of liability authority in two categories of NASA agreements: (1) Agreements for ISS activities pursuant to the ''Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of

America concerning Cooperation on the Civil International Space Station'' (commonly referred to as the ISS Intergovernmental Agreement, or IGA); and (2) launch agreements involving science or space exploration activities unrelated to the ISS.

Following promulgation of the two-category regulatory authority, the three-category contract clause arrangement no longer aligned. The procurement rule of May 7, 2011 proposed to delete one clause and realign the remaining two to cover the two categories of contracts on which cross-waivers of liability are authorized and required: Contracts supporting ISS and contracts supporting launches into space that are not related to the ISS. Clause 1852.228–72, Cross-Waiver of Liability for Space Shuttle Services will be deleted. Clause 1852.228–76 is amended and retitled *Cross-Waiver of Liability for International Space Station Activities,* and 1852.228–78 is amended and retitled *Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to the International Space Station.* While the proposed rule included continuing applicability of cross waivers of liability to Space Shuttle support contracts, this final rule removes the Space Shuttle support contract references because NASA will not issue any new contracts for Space Shuttle support. Further, wherever the cross-waiver of liability clauses are referenced in the NASA FAR Supplement, conforming changes are being made to clause numbers and titles.

2. Discussion and Analysis

Two respondents submitted comments in response to the proposed rule. NASA reviewed and considered all comments in the development of the final rule. No changes are being made to the rule as a result of the comments. A discussion of the comments follows:

A. One respondent mistakenly cited this docket number, but the comments submitted were unrelated to this rule.

B. One respondent submitted 19 specific recommendations for change. They are individually addressed below. In general, the comments appear to confuse the relationship NASA has with its contractors vice that which NASA has with Cooperating Parties under cooperative Space Act agreements. This procurement rule addresses only the requirements for NASA *contractors.* This rule does not address the relationship that NASA has with other entities under cooperative Space Act agreements.

C. Comments:

1. 1852.228–76(a): The stated objective is ''to extend this cross-waiver of liability to NASA *contracts''* [emphasis added.] There is a distinction between NFS contracts and Space Act agreements that is recognized throughout the proposed rule, but not reflected in paragraph (a). Recommend adding ''Space Act agreements''.

NASA Response: The distinction between NASA contracts and Space Act agreements is recognized throughout the rule, but this rule applies only to contracts, and therefore, Space Act agreements are not cited in the clause. The purpose of this rule is to extend cross-waivers of liability to contracts. Space Act Agreements have their own set of terms, and they are governed by 14 CFR part 1266. To the extent that cross-waivers of liability apply to Space Act agreements, the terms will be included in the Space Act agreement. Space Act agreements are outside the scope of this Rule.

2. 1852.228–76(b)(1): NASA contracts should be added to the definition of ''Agreement'' to ensure that the cross-waiver clauses include FAR-based contracts. NASA Response: ''Agreement'', as defined in the clause, is correct. Agreement, as used here, refers to Space Act agreements between NASA and Cooperating Parties, and does not include contracts. Contracts between NASA and contractors, including subcontracts and supplier contracts thereunder, are not Agreements as defined in the clause.

3. 1852.228–76(b)(5): The definition of ''Party'' should be amended to add NASA contractors.

NASA Response: ''Party'', as defined in the clause, refers to Parties to the cooperative Space Act agreement, i.e. the Space Act agreement between NASA and a Cooperating Party. The definition does not include contractors, and the definition clearly states that contractors and subcontractors are not ''Parties''.

4. 1852.228–76(b)(6): Recommend amending the definition of payload to read ''all property to be flown or used on or in a Launch or *Transfer Vehicle* or the ISS''

NASA Response: It is not necessary to add ''transfer vehicle'' to the definition of ''payload'' because, at the time of launch, a transfer vehicle is ''property flown on a launch vehicle'', and is therefore included in the definition of payload. While it is true that, at some point, a transfer vehicle ceases to be ''payload'' and becomes, instead, a ''space vehicle'', it is not necessary, for purposes of this rule, to define that point in time. A transfer vehicle is subject to cross-waivers of liability whether it is functioning as payload or as a space vehicle. For a detailed discussion on NASA's development of a definition of ''transfer vehicle,'' please see 73 FR 10146.

5. 1852.228–76 (b)(7): The ''Protected Space Operations'' definition includes certain activities ''in implementation of the IGA * * * and contracts to perform work in support of NASA's obligations under the IGA and these related agreements.'' It appears that the capitalized ''Agreements'' in this sentence refers to the IGA; however, ''Agreement'' is defined in the clause to mean otherwise. Recommend clarifying the distinction.

NASA response: Agreements as used in 1852.228–76(b)(7) is consistent with the definition of Agreement in the clause. It does not refer specifically to the IGA.

6. 1852.228–76(c)(1): Recommend changing ''the contractor'' to ''each party''.

NASA response: The ''contractor'' is the correct term. The purpose of the clause is to require the contractor to agree to a waiver of liability. The clause does not apply to ''each party'' to other agreements.

7. 1852.228–76(c)(2): Recommend changing ''the contractor'' to ''each party'' and ''subcontractors'' to ''related entities''.

NASA response: The clause is correct as written. The clause requires the contractor to extend the cross-waiver liability to its subcontractors at any tier. Use of the terms ''Party'' or ''related entities'' would, for reasons stated above, be incorrect. 1852.228–76(c)(2)(ii): Recommend changing ''subcontractors'' to ''related entities.''

NASA Response: See response to 7.

8. 1852.228–76(c)(4)(i): Recommend changing ''the Government'' to ''a Party'', and ''own contractors or between its own contractors and their subcontractors and subcontractors'' to '' related entities''.

NASA Response: The clause is correct as written. Cross-waivers do not apply between the Government and its contractors or between a contractor and its subcontractors. Contract terms and conditions apply to these relationships.

9. 1852.228–76(c)(4)(v): Recommend changing ''contractor'' to ''party'' and ''subcontractor'' to ''related entity''.

NASA Response: See response to 9.

10. 1852.228–76(c)(4)(vi): Recommend changing ''Government'' to ''a Party'' and ''contractor's'' to ''other Party's'' inserting the word ''contractual'' before ''obligations '' and changing ''contract'' to ''agreement''.

NASA Response: The clause is correct as written. Specifically, 1852.228–76(c)(4)(vi) refers to the relationship

between NASA and its contractor and does not include any other parties or any agreements.

11. 1852.228–78(b)(1): NASA contracts should be amended to add the definition of ''Agreement'' to ensure that the cross-waiver clauses include FAR-based contracts. We recommend amending the definition as follows: ''Agreement'' refers to any NASA Space Act agreements *or contracts that contain* the cross-waiver of liability provisions authorized by 14 CFR Part 1266–104.''

NASA Response: This rule amends the NASA FAR Supplement which applies only to contracts and not Space Act Agreements. Also see response to 2.

12. 1852.228–78(b)(4): Recommend the definition of ''Party'' be amended to add NASA contracts.

NASA Response: See response to 3.

13. 1852.228–78(b)(5): Recommend adding ''Transfer Vehicle'' to the definition of ''Payload''.

NASA Response: See response to 4.

14. 1852.228–78(c)(1): Recommend changing ''contractor'' to ''each Party''.

NASA Response: The clause is correct as written. The contract clause obligates the contractor. See response to 6 above.

15. 1852.228–78(c)(2): Recommend changing ''contractor'' to ''party'' and ''own subcontractors at all tiers'' to ''related entities''.

NASA Response: The clause is correct as written. See response to 7.

16. 1852.228–78(c)(4)(i): Recommend changing ''Government'' to ''a Party'' and ''own contractors or between its own contractors and their subcontractors'' to '' Related Entities''.

NASA Response: The clause is correct as written. See response to 9.

17. 1852.228–78(c)(4)(v): Recommend changing ''contractor'' to ''a Party'' and ''subcontractors'' to ''related entities'' .

NASA Response: The clause is correct as written. See response to 9.

18. 1852.228–78(c)(4)(6): Recommend changing ''Government'' to ''a party'' and ''contractor's'' to ''other party's'' and inserting the word ''contractual'' before ''obligations '' and ''contract'' to ''agreement''.

NASA Response: See response to 11.

3. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

4. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et. seq.,* because it the rule does not impose any additional requirements on small business. The rule updates and realigns already-existing requirements.

5. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1812, 1828, and 1852

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1812, 1828, and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1812, 1828, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1).

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

■ 2. In section 1812.301, paragraph (f)(i)(K) is removed and reserved, and paragraphs (f)(i)(L) and (f)(i)(M) are revised to read as follows:

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

(f)(i) * * *

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

(M) 1852.228–78, Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station.

* * * * *

PART 1828—BONDS AND INSURANCE

■ 3. Section 1828.371 is revised to read as follows:

1828.371 Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.

(a) In contracts covering International Space Station activities, or Science or Space Exploration activities unrelated to the International Space Station that involve a launch, NASA shall require the contractor to agree to waive all claims against any entity or person defined in the clause based on damage arising out of Protected Space Operations. This cross-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-waivers will require the contractor to extend the cross-waiver provisions to their subcontractors at any tier and related entities ensuring those subcontractors and related entities also waive all claims against any entity or person defined in the clause for damages arising out of Protected Space Operations. The purpose of the clauses prescribed in this section is to extend the cross-waivers under other agreements to NASA contractors that perform work in support of NASA's obligations under these agreements.

(b) The contracting officer shall insert the clause at 1852.228–78, Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station, in solicitations and contracts above the simplified acquisition threshold for the acquisition of launches for science or space exploration activities unrelated to the International Space Station or for acquisitions for science or space exploration activities that are not related to the International Space Station but involve a launch. If a science or space exploration activity is in support of the International Space Station, the contracting officer shall insert the clause prescribed by paragraph (c) of this section and designate its application to that particular launch.

(c) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for International Space Station Activities, in solicitations and contracts above the simplified acquisition threshold when the work to be performed involves Protected Space Operations, as that term is defined in the clause, relating to the International Space Station.

(d) At the contracting officer's discretion, the clauses prescribed by paragraphs (b) and (c) of this section may be used in solicitations, contracts,

new work modifications, or extensions to existing contracts under the simplified acquisition threshold involving science or space exploration activities unrelated to the International Space Station, or International 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 science or space exploration activities unrelated to the International Space Station, or International Space Station activities.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.228–72 [Removed]

■ 4. Section 1852.228–72 is removed.
■ 5. Section 1852.228–76 is revised to read as follows:

1852.228–76 Cross-waiver of liability for international space station activities.

As prescribed in 1828.371(c) and (d), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012)

(a) The Intergovernmental Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) for the International Space Station (ISS) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. The objective of this clause is to extend this cross-waiver of liability to NASA contracts in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that this cross-waiver of liability be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(1) ''*Agreement*'' refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized by 14 CFR 1266.102.

(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) ''*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.

(4) ''*Partner State*'' includes each Contracting Party for which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(5) ''*Party*'' means a party to a NASA Space Act agreement involving activities in connection with the ISS and a party that is neither the prime contractor under this contract nor a subcontractor at any tier.

(6) ''*Payload*'' means all property to be flown or used on or in a Launch Vehicle or the ISS.

(7) ''*Protected Space Operations*'' means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. ''Protected Space Operations'' also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(8) ''*Related Entity*'' means:

(i) A contractor or subcontractor of a Party or a Partner State at any tier;

(ii) A user or customer of a Party or a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms ''contractor'' and ''subcontractor'' include suppliers of any kind.

(9) ''*Transfer Vehicle*'' means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-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, against:

(i) A Party as defined in (b)(5) of this clause;

(ii) A Partner State other than the United States of America;

(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause to its subcontractors at any tier by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their subcontractors waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects,* which entered into force on September 1, 1972, where 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.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause;

(vi) Claims by the Government arising out of or relating to the contractor's failure to perform its obligations under this contract.

(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 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

■ 6. Section 1852.228–78 is revised to read as follows:

1852.228–78 Cross-waiver of liability for science or space exploration activities unrelated to the International Space Station.

As prescribed in 1828.371(b) and (d), insert the following clause:

CROSS–WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION

(*OCT 2012*)

(a) The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities that are not related to the International Space Station (ISS) but involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(1) ''*Agreement*'' refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR 1266.104.

(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) ''*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.

(4) ''*Party*'' means a party to a NASA Space Act agreement for Science or Space Exploration activities unrelated to the ISS that involve a launch and a party that is neither the prime contractor under this contract nor a subcontractor at any tier hereof.

(5) ''*Payload*'' means all property to be flown or used on or in a Launch Vehicle.

(6) ''*Protected Space Operations*'' means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities unrelated to the ISS that involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the Agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

Protected Space Operations excludes activities on Earth which are conducted on return from space to develop further a payload's product or process other than for the activities within the scope of an Agreement.

(7) ''*Related entity*'' means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier.

Note to paragraph (a)(7): The terms ''contractors'' and ''subcontractors'' include suppliers of any kind.

(8) ''*Transfer Vehicle*'' means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-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 waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party;

(ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;

(iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects,* entered into force on 1 September 1972, in which 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.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(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 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of Clause)

[FR Doc. 2012–23715 Filed 9–26–12; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 3415

Contracting by Negotiation

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 29 to End, revised as of October 1, 2011, on page 150, in section 3415.605, paragraph (d) is correctly revised, and section 3415.606 is added to read as follows:

3415.605 Content of unsolicited proposals.

* * * * *

d. No prior commitments were received from Departmental employees regarding acceptance of this proposal.

Date:

Organization:

Name:

Title:

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization.)

3415.606 Agency procedures.

(b)(1) The HCA or designee is the contact point to coordinate the receipt, control, and handling of unsolicited proposals.