TABLE I–7 TO SUBPART I OF PART 98—DEFAULT EMISSION FACTORS ($1–U_{ij}$) FOR GAS UTILIZATION RATES (U_{ij}) AND BY-PRODUCT FORMATION RATES (B_{ijk}) FOR PV MANUFACTURING—Continued

Process type factors	Process gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	$c-C_4F_8$	NF_3 Remote	NF_3	SF_6
CVD Chamber Cleaning BCF_4	NA	0.2	NA	NA	0.2	0.1	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

[FR Doc. 2015–05549 Filed 3–11–15; 8:45 am]

BILLING CODE 1505–01–D

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 709 and 752

RIN 0412–AA76

Incorporate Various Administrative Changes and Internal Policies in to the USAID Acquisition Regulation (AIDAR)

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule; Corrections.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing corrections to FR Doc. 2014–26051; Incorporate Various Administrative Changes and Internal Policies in to the USAID Acquisition Regulation (AIDAR), that was published on December 16, 2014 (79 FR 74985).

DATES: Effective March 16, 2015.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION:

Corrections

In rule FR Doc. 2014–26051 published in the **Federal Register** at 79 FR 74985, December 16, 2015, make the following corrections:

§ 709.403 [Corrected]

■ 1. On page 74992, in the definitions of ''Debarring official'' and ''Suspending Official'' in § 709.403, correct ''Senior Deputy Assistant Administrator, Bureau for Management'' to read ''Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy found in ADS 103—Delegations of Authority''.

§ 752.7005 [Corrected]

On page 75002, § 752.7005(b)(1)(iv), remove the second sentence.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Aman S. Djahanbani,

Chief Acquisition Officer.

[FR Doc. 2015–05580 Filed 3–11–15; 8:45 am]

BILLING CODE 6116–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1809, 1815, 1816, 1817, 1829, 1823, 1827, 1828, 1831, 1832, 1834, 1837, 1841, 1842, 1846, 1849, 1851, and 1852

RIN 2700–AE01 and 2700–AE09

NASA Federal Acquisition Regulation Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) with the goal of eliminating unnecessary regulation, streamlining overly-burdensome regulation, clarifying language, and simplifying processes where possible.

DATES: Effective April 13, 2015.

FOR FURTHER INFORMATION CONTACT: Cynthia Boots, NASA, Office of Procurement, email: *cynthia.d.boots@nasa.gov,* or 202–358–1248.

SUPPLEMENTARY INFORMATION:

I. Background

The NASA FAR Supplement (NFS) is codified at 48 CFR part 1800. Periodically, NASA performs a comprehensive review and analysis of the regulation, makes updates and corrections, and reissues the NASA FAR Supplement. The last reissue was in 2004. The goal of the review and analysis is to reduce regulatory burden where justified and appropriate and make the NFS content and processes more efficient and effective, faster and simpler, in support of NASA's mission. Consistent with Executive Order (E.O.) 13563, Improving Regulations and Regulatory Review, NASA is currently reviewing and revising the NFS with an emphasis on streamlining it and reducing associated burdens. Due to the volume of the NFS, these revisions are being made in increments.

NASA published two proposed rules as the first two incremental steps to update and revise the NASA FAR Supplement: 78 FR 23199–23203, April 18, 2013, and 79 FR 57015–57032, September 24, 2014. Together, these two rules proposed regulatory changes to 19 Parts of the NFS. The two rules also advised the public that no regulatory changes were being made to an additional 13 NFS Parts.

This final rule finalizes these two proposed rules.

II. Discussion and Analysis

NASA reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

The definitions of ''counterfeit goods'' and ''legally authorized source'' at 1846.101 are deleted. NASA, in conjunction with the FAR Council, is working to develop and implement a definition of counterfeit part in the Federal Acquisition Regulation, which would also address the concept of ''legally authorized sources''. Consequently, the NFS will not have an independent definition of either ''counterfeit goods'' or ''legally authorized source''. Rather, use of the term counterfeit part in the NFS will be consistent with the FAR definition.

B. Analysis of Public Comments

Comment: In response to proposed rule #1, NASA received comments from three respondents. The three respondents suggested that the proposed definitions of ''counterfeit goods'' and ''legally authorized source'' were problematic in that they introduce inconsistencies with standard industry

usage of the terms and potential FAR definitions.

Response: The definitions of both terms have been deleted. NASA concurs that a Federal definition in the FAR is appropriate, and has been part of team working to implement FAR definitions. (Reference FAR Case 2013–002)

Comment: In response to proposed rule #2, NASA received comments from one respondent requesting that NASA delete 1852.227–14(c)(1)(iv) because it adds unnecessary notice and marking requirements.

Response: NASA revised Part 1827 to conform to recent FAR changes to Part 27, and 14 CFR 1245.100–117, but did not make significant changes to current coverage regarding NASA requirements related to data rights. The FAR clause at FAR 52.227–14(c)(1), Copyright, does not address the NASA-specific rights afforded NASA under the Space Act (51 U.S.C. 20135(b). Consequently, the notice and marking requirements at 1852.227–14 (c)(1)(iv) are appropriate and remain in the final rule.

Comment: In response to proposed rule # 2, NASA received comments from one respondent suggesting that 1852.227–88 lacked a prescription and rationale.

Response: Clause 1852.227–88 will be included in solicitations and contracts on a case-by-case basis dependent upon the Government-owned software provided under the contract. NASA will utilize the clause judiciously in order to reduce contract costs. Offerors will be reimbursed for any associated costs when the clause is utilized.

C. Technical Amendment

In proposed rule # 2, NASA notes an error in the publication and makes a technical correction in this final rule. At 1816.402.274(g)(3), the proposed rule should have stated a flat rate of 10% in lieu of a recommended rate of ''up to 15%'' for use when evaluating contractor performance related to compliance with subcontracting plans. Instead, the proposed rule retained the current, extraneous language ''up to'' before the 10% which is inappropriate. The final rule removes ''up to''.

III. 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.

IV. 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, 5 U.S.C. 601 *et seq.* because it mainly clarifies or updates existing regulations. In several instances, this rule deletes existing requirements which eases the regulatory burden on all entities.

V. Paperwork Reduction Act

The proposed rule #1 included an application for clearance of a new information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35). The collection is at 1852.215–77(c), Pre-proposal/pre-bid conference, wherein attendees at pre-proposal or pre-bid conferences will be required to submit personal identity information. NASA did not receive any comments on the information collection request.

Needs and Uses: This information collection requires contractors to supply personal identity information for attendees at pre-proposal conferences that are held at NASA facilities. The information includes, but is not limited to name, social security number, place of birth, and citizenship. NASA will utilize the information to perform security checks for entrance to NASA facilities. Without the collection of this information, NASA will be unable to permit entrance to NASA facilities for attendance at pre-proposal conferences.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Approval of the information collection request from the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) is expected concurrent with the final rule.

List of Subjects in 48 CFR Parts 1809, 1815, 1816, 1817, 1819, 1823, 1827, 1828, 1831, 1832, 1834, 1837, 1841, 1842, 1846, 1849, 1851, and 1852

Government procurement.

Cynthia D. Boots,

Alternate Federal Register Liaison.

Accordingly, 48 CFR parts 1809, 1815, 1816, 1817, 1819, 1823, 1827, 1828, 1831, 1832, 1834, 1837, 1841, 1842, 1846, 1849, 1951, and 1852 are amended as follows:

PART 1809—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for part 1809 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1809.206–70 and 1809.206–71 [Removed]

■ 2. Sections 1809.206–70 and 1809.206–71 are removed.

Subpart 1809.6 [Removed]

■ 3. Subpart 1809.6, consisting of section 1809.670, is removed.

PART 1815—CONTRACTING BY NEGOTIATION

■ 4. The authority citation for part 1815 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1815.403 [Amended]

■ 5. In section 1815.403, the section heading is amended by adding the word ''certified'' between the words ''Obtaining'' and ''cost''.

■ 6. Revise section 1815.403–170 to read as follows:

1815.403–170 Waivers of certified cost or pricing data.

(a) NASA has waived the requirement for the submission of certified 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 data other than certified 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 certified 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 data other than certified cost or pricing data is submitted to determine price reasonableness and cost realism.

PART 1816—TYPES OF CONTRACTS

■ 7. The authority citation for part 1816 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1816.307–70 [Amended]

■ 8. In section 1816.307–70, remove the last sentence in paragraph (c).

■ 9. In section 1816.402–270, paragraphs (a) through (d) are revised to read as follows:

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 that are 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 the contracting activity. Performance incentives may be included in supply and service contracts valued under $25 million, acquired under procedures other than Part 12, at the discretion of the contracting officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure 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 performance after 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 performance requirement. This standard performance level is normally the contract's target level of performance. No performance incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive or negative, and its associated unit of measurement should reflect the value to the Government of that level of 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 performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When 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 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 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 supply or service lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several items (*e.g.,* multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

* * * * *

1816.405–270 [Amended]

■ 10. In section 1816.405–270:

■ a. Remove paragraph (a);

■ b. In paragraph (b), remove the first sentence; and

■ c. Redesignate paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c).

1816.405–272 [Amended]

■ 11. In section 1816.405–272, in paragraph (b), remove the word ''should'' in the last sentence and add in its place ''shall''.

1816.405–273 [Amended]

■ 12. In section 1816.405–273, in paragraph (a), remove the word ''often'' in the first sentence.

1816.405–274 [Amended]

■ 13. In section 1816.405–274, in paragraph (e)(3), add the word ''fee'' between the words ''award'' and ''shall'' in the second sentence and revise paragraph (g) to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(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, small disadvantaged business, HUBZone small business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business concerns, and Historically Black Colleges and Universities—Minority Institutions (HBCU/MIs). The evaluation should consider both goals as a percentage of subcontracting dollars as well as a percentage of the total contract value.

(2) 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.

(3) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) and (2) of this section shall be 10 percent of available award fee and shall be separate from all other factors.

* * * * *

■ 14. In section 1816.405–275;

■ a. Revise paragraph (a); and

■ b. In paragraph (b), the parenthetical reference at the end of the first sentence is revised to read ''(see FAR 16401(e)(3)(iv))''.

The revision reads as follows:

1816.405–275 Award fee evaluation rating.

(a) All award fee contracts shall utilize the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in FAR 16.401(e)(3)(iv). Contracting officers may supplement these descriptions with more specifics relative to their procurement but they cannot alter or delete the FAR adjectival rating descriptions.

* * * * *

■ 15. In section 1816.406–70, in paragraph (f), the last sentence is revised to read as follows:

1816.406–70 NASA contract clauses.

* * * * *

(f)* * * A clause substantially as stated at 1852.216–88 may be included in lower dollar value supply or service contracts at the discretion of the contracting officer.

PART 1817—SPECIAL CONTRACTING METHODS

■ 16–18. The authority citation for part 1817 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

Subpart 1817.71 [Removed]

■ 19. Subpart 1817.71 is removed.

Subpart 1817.73 [Redesignated as Subpart 1817.70]

■ 20. Subpart 1817.73 is redesignated as subpart 1817.70.

PART 1819—SMALL BUSINESS PROGRAMS

■ 21. The authority citation for part 1819 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

■ 22. In section 1819.201, the last sentence in paragraph in (a)(i) and paragraph (a)(ii) are revised to read as follows:

1819.201 General Policy.

(a)(i) * * * The participation of these entities is emphasized in high-technology areas where they have had low involvement level.

(a)(ii) NASA biennially negotiates Agency small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has an annual goal of five percent for prime and subcontract awards to small disadvantaged businesses (SDBs) and women-owned small businesses (WOSBs), and a three percent goal for HUBZone and service-disabled, veteran-owned small business concerns.

* * * * *

■ 23. Section 1819.302 is revised to read as follows:

1819.302 Protesting a small business representation or rerepresentation.

(h) When the contracting officer determines in writing that an award must be made to protect the public interest, the contracting officer shall notify the Headquarters Office of Procurement, Program Operations Division, the Headquarters Office of Small Business Programs, and the SBA.

■ 24. In section 1819.708–70, paragraph (b) is revised to read as follows:

1819.708–70 NASA solicitation provision and contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 1852.219–75, Individual Subcontracts Reporting, in solicitations and contracts containing the clause at FAR 52.219–9, except for contracts covered by an approved commercial subcontracting plan.

■ 25. Section 1819.811–3 is added to read as follows:

1819.811–3 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–11, Special 8(a) Contract Conditions, in contracts and purchase orders awarded directly to the 8(a) contractor when the acquisition is accomplished using the procedures of FAR 19.811–1(a) and (b).

(d) The contracting officer shall insert the clause at 1852.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of FAR 19.805.

(1) The clause at 1852.219–18 with Alternate I to the FAR clause at 52.219–18 will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to FAR 19.804–2.

(2) The clause at 1852.219–18 with Alternate II to the FAR clause at 52.219–18 will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see FAR 19.102(f)(4) and (5)).

(e) Follow the prescription at FAR 19.811–3(e).

Subpart 1819.10, 1819.70 and 1819.71 [Removed and Reserved]

■ 26. Subparts 1819.10, 1819.70, and 1819.71 are removed and reserved.

■ 27. In section 1819.7201, paragraph (a)(1) is revised to read as follows:

1819.7201 Scope of subpart.

(a) * * *

(1) Provide incentives to NASA contractors, performing under at least one active, approved subcontracting plan negotiated with NASA, to assist protégés in enhancing their capabilities to perform as viable NASA contractors, other Government contractors, and commercial suppliers on contract and subcontract requirements.

* * * * *

■ 28. Sections 1819.7202, 1819.7203, 1819.7204, and 1819.7205 are revised to read as follows:

1819.7202 Eligibility

(a) Eligibility of Mentors: To be eligible as a mentor, an entity must be—

(1) A large prime contractor performing with at least one approved subcontracting plan, other than a commercial plan, negotiated with NASA, pursuant to FAR Subpart 19.7, the Small Business Subcontracting Program. A contractor may apply to become a mentor if they currently are not performing under a NASA contract as long as they are currently performing another Federal agency contract with an approved subcontracting plan. The NASA mentor-protégé agreement, however, will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan; and

(2) Eligible for receipt of Government contracts. An entity will not be approved for participation in the Program if, at the time of submission of the application to the Headquarters Office of Small Business Programs, the entity is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) Eligibility of Protégés: To be eligible to participate as a protégé, an entity must be—

(1) Classified as a Small Disadvantaged Business (SDB), a small disadvantaged business, a women-owned small business, a historically underutilized business zone concern, a veteran-owned, service-disabled small business, a historically black college and university, or a minority institution. The protégé entity may also be an active NASA SBIR/STTR Phase II company, or an entity participating in the AbilityOne program.

(2) Eligible for the award of Federal contracts; and

(3) A small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor.

(c) A protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements.

1819.7203 Mentor-protégé advance payments

If advance payments are contemplated, the mentor must first have the advance payments approved the contracting officer in accordance

with FAR Subpart 32.4, Advance Payments for Non-commercial items.

1819.7204 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit a complete agreement package to the Contracting Officer who will forward the completed agreement package to the cognizant Small Business Specialist at the NASA Center. The submission package must include the following—

(1) A signed mentor-protégé agreement;

(2) A signed protégé application;

(3) The estimated cost of the technical assistance to be provided, broken out per year and per task, in a separate cost volume; and

(4) Additional information as may be requested by the NASA OSBP; and

(5) A signed letter of endorsement of the agreement by the contracting officer and the contracting officer representative.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified, prior to the mentor incurring costs for developmental assistance to the protégé.

1819.7205 Award Fee Pilot Program.

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR/STTR Phase II Protégés only. The award fee will be assessed at the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans.

(c) Evaluation criteria to determine the award fee should include:

(1) Benefit of the agreement to NASA;

(2) Active participation in the Program;

(3) The amount and quality of developmental assistance provided;

(4) Subcontracts awarded to small businesses and others;

(5) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(6) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

1819.7206 through 1819.7211 [Removed and Reserved]

■ 29. Sections 1819.7206, 1819.7207, 1819.7208, 1819.7209, 1819.7210, and 1819.7211 are removed and reserved.

■ 30. In section 1819.7212, paragraph (e) is revised to read as follows:

1819.7212 Reporting requirements.

* * * * *

(e) The protégé semiannual report required by paragraph (d) must be submitted separately from the Mentor's semiannual report submission.

* * * * *

1819.7213 and 1819.7214 [Removed and Reserved]

■ 31. Remove and reserve sections 1819.7213 and 1819.7214.

1819.7301 [Amended]

■ 32. In section 1819.7301, add ''\, as amended.'' at the end of the first sentence.

■ 33. Amend section 1819.7302 by adding two sentences at the end of paragraphs (c), (d), and (e); and revising paragraph (f) to read as follows:

1819.7302 NASA contract clauses.

* * * * *

(c) * * * Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator.

(d) * * * Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator.

(e) * * * Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator.

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

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

■ 34. The authority citation for part 1823 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

Subpart 1823.10 [Removed]

■ 34. Subpart 1823.10 is removed.

■ 35. In Subpart 1823.71, the subpart heading and section 1823.7101 are revised to read as follows:

1823.71 Authorization for Radio Frequency Use.

1823.7101 Contract clause.

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

■ 36. Part 1827 is revised to read as follows:

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 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 Subcontracts.
1827.304–4 Appeals.
1827.305 Administration of the patent rights clauses.
1827.305–3 Securing invention rights acquired by the Government.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.
1827.404–4 Contractor's release, publication, and use of data.
1827.409 Solicitation provisions and contract clauses.

Authority: 51 U.S.C. 20113(a).

1827.000 Scope of part.

This part prescribes NASA policies, procedures, and contract 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.

As used in this subpart—

Administrator means the Administrator of NASA or a duly authorized representative.

Reportable item means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable 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 protectable under Title 17 of the United States Code.

Subject invention, in lieu of the definition in FAR 27.301, means any reportable item that is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

1827.302 Policy.

(a) *Introduction.* 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 of related property rights is based upon Section 20135 of the National Aeronautics and Space Act (51 U.S.C. 20135) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(b)(4) of Executive Order 12591. NASA contractors subject to Section 20135 of the Act shall ensure the prompt reporting of reportable items in order to protect the Government's interest and to provide the 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.* (1) For NASA contracts, the contractor right to elect title under the FAR only applies to contracts with small businesses and nonprofit organizations. For other business entities, see paragraph (b)(2)(v) of this section;

(2)(v) Under any NASA contract with other than a small business or nonprofit organization (*i.e.,* contracts subject to section 20135(b) of the Act), title to subject inventions vests in NASA when the determinations of section 20135(b)(1)(A) or (b)(1)(B) have been made. The Administrator may grant the contractor a waiver of title in accordance with 14 CFR part 1245.

(3) *Contractor petitions for waiver of title.* The Administrator may waive all or any part of the rights of the United States with respect to any invention or class of inventions made or which may be made in the performance of NASA contracts with other than a small business firm or a nonprofit organization if the Administrator determines that the interests of the United States will be served. The procedures and instructions for contractors to submit petitions for waiver of rights in subject inventions are provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, *http://www.gpo.gov/fdsys/pkg/CFR-2012-title14-vol5/pdf/CFR-2012-title14-vol5-part1245.pdf.* Waiver may be requested in advance of contract award for any subject invention or class of subject inventions or during contract performance for individually identified subject inventions reported under the contract. For individual identified subject inventions, the petition shall identify each invention with particularity (*e.g.,* by NASA's assigned number to the Disclosure of Invention and New Technology report or by title and inventorship). For advance waivers, the petition shall identify the invention or class of inventions that the Contractor believes will be made under the contract and for which waiver is being requested. To meet the statutory standard of ''any invention or class of inventions,'' the petition must be directed to a single invention or to inventions directed to a particular process, machine, manufacture, or composition of matter, or to a narrowly-drawn, focused area of technology. When a waiver of title is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver, such as requirements for reporting and filing patent applications on waived inventions, are provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, and the Instrument of Waiver executed under those Regulations.

(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 title has been granted, 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.

(e) *Utilization reports.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or a nonprofit organization and for which waiver of title has been granted, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, and the Instrument of Waiver executed under those Regulations.

(f) *March-in rights.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or a nonprofit organization and for which waiver of title has been granted, march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, and the Instrument of Waiver executed under those Regulations.

(g) *Preference for United States industry.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or a nonprofit organization and for which waiver of title has been granted, waiver of the requirement for substantial manufacture in the United States shall be in accordance with Title 35 of the United States Code, section 204.

(i) *Minimum rights to contractor.* (1) For NASA contracts with other than a small business firm or a nonprofit organization, where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with the NASA Patent Waiver Regulations, 14 CFR 1245.108, 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 procedures for revoking or modifying the license to a contractor that is other than a small business firm or a nonprofit organization are described in 14 CFR 1245.108.

(k) *Awards.* It is the policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board in accordance with 14 CFR part 1240, subpart 1, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

1827.303 Solicitation provisions and contract clauses.

(a)(1) 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 when the eventual awardee may be a small business or a nonprofit organization.

(b)(1) 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.

(i) To qualify for the clause at FAR 52.227–11, a prospective contractor shall be required to represent itself as either a small business firm or a nonprofit organization. If the contracting officer has reason to question the size or nonprofit status of the prospective contractor, the contracting officer will follow the procedures at FAR 27.304–1(a).

(iii) The contracting officer shall complete paragraph (j) of the clause at FAR 52.227–11 with the following: Communications and information submissions required by this clause will be made to the individuals identified in the clause at 1852.227–72, Designation of New Technology Representative and Patent Representative.

(iv) See also paragraph (d)(3) of this section.

(6) Alternate IV to 52.227–11 is not used in NASA contracts. See instead 1827.303(b)(1).

(7) The contracting officer shall consult with the center patent or intellectual property counsel regarding the use of Alternate V in contracts for the performance of services at a NASA installation when a contractor is directed to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a. Alternate V may be included in, or added to, the contract when it is contemplated that a Contractor will be directed to fulfill NASA's obligations under a CRADA, but should be added prior to the contractor performing work under the CRADA.

(d)(1) The contracting officer shall insert the clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (*i.e.,* those subject to section 21035(b) of the Act), if the contract is to be performed in the United States, 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 all inclusive):

(i) Conduct of basic or applied research.

(ii) 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.

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

(iv) 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.

(v) 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.

(vi) 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 (i) through (v) of this section.

(2) 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—Other than a Small Business Firm or Nonprofit Organization (see paragraph (d)(1) of this section).

(3) 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—Ownership by the Contractor, or 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization (see paragraph (d)(1) of this section). It may also be inserted, upon consultation with the center patent or intellectual property counsel, in solicitations and contracts using another patent rights clause. The center New Technology and Patent Representatives are identified at *http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html.*

(e)(1) When work is to be performed outside the United States 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 center patent or 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—Ownership 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 27.304–3 regarding subcontracts with U.S. firms.)

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

1827.304 Procedures.

1827.304–1 General.

(b)(1) *Exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, shall apply.

(c) *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)(3)), 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 part 1245, subpart 1.

(d) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR part 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.* For contracts with other than a small business firm or a nonprofit organization, revocation or modification of the contractor's license rights in subject inventions made and reported under the contract shall be in accordance with 14 CFR 1245.108 (see 1827.302(i)(2)).

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Agency Counsel for Intellectual Property (ACIP) 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 of the Patent Representative, to the ACIP for approval.

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

(a)(3)(i) This subsection applies only to contracts placed by or for other agencies and not to task or delivery orders placed by or for other agencies against NASA Government-wide Acquisition Contracts (GWACs) or Multiple Agency Contracts (MACs).

(ii) When a contract is placed for another agency with a small business or nonprofit organization and the agency does not request the use of a specific patent rights clause, the contracting officer shall use the clause at FAR 52.227–11, Patent Rights—Ownership by the Contractor as modified by 1852.227–11 (see 1827.303(b)(1)).

(iii) When a contract is placed for another agency with other than a small business or nonprofit organization, the contracting officer, in accordance with Section 20135 of the Act, shall use the clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization (see 1827.303(d)(1).

(iv) When work is to be performed outside the United States by contractors that are not domestic firms, the contracting officer shall use one of the clause described in 1827.303(e)(1).

1827.304–3 Subcontracts.

(a) Unless otherwise authorized or directed by the contracting officer, contractors awarding subcontracts at any tier shall select and include in the subcontracts one of the clauses identified in subparagraphs (a)(1) or (2) of this section. At all tiers, the applicable clause identified below shall be modified to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(1) The clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, shall be used 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(d)(1).

(2) The clause at FAR 52.227–11, Patent Rights—Ownership by the Contractor, modified by 1852.227–11 (see 1827.303(b)(1)), shall be used 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.

1827.304–4 Appeals.

FAR 27.304–4 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

1827.305 Administration of the patent rights clauses.

1827.305–3 Securing invention rights acquired by the Government.

When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, a determination of title is to be made in accordance with section 20135(b) of the Act (51 U.S.C. 20135(b)), and reflected in appropriate instruments executed by NASA Administrator and forwarded to the contractor by the contracting officer.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

1827.404–4 Contractor's release, publication, and use of data.

(b)(1) 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(b)(1)), the contractor shall not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. The prohibition on ''release to others'' does not prohibit release to another Federal Agency for its use or its contractors' use, as long as any such release is consistent with any restrictive markings on the software. Any restrictive markings on the software shall take precedence over the aforementioned release. Any such release to a Federal Agency in accordance with this paragraph shall limit use to the Federal Agency or its contractors for Government purposes only.

(2) The contracting officer may, in consultation with the center patent or intellectual property counsel, grant the contractor permission to assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract if:

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating identified computer software first produced under the contract into that line, either directly itself or through a licensee;

(ii) The contractor has identified an existing open source software project or proposes a new one and states a positive intention of incorporating identified computer software first produced under the contract into that project, or has been instructed by the Agency to incorporate software first produced under the contract into an open source software project or otherwise release the software as open source software;

(iii) The contractor has made, or will be required to make, substantial contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iv) The concurrence of the Agency Counsel for Intellectual Property, or designee, is obtained.

(c)(1) The contractor's request for permission in accordance with 1827.404–4(b) may be made either before contract award or during contract performance.

(2)(i) If the basis for permitting the assertion under 1827.404–4(b)(2) is subsection (i), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances that the

computer software will be incorporated into an existing or proposed new commercial computer software product line within a specified reasonable time, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(ii) If the basis for permitting the assertion under 1827.404–4(b)(2) is paragraph (b)(2)(ii), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances that the computer software will be incorporated into an existing or proposed new open source project within a specified reasonable time, with contingencies enabling the Government to obtain the right to distribute the software for open source development, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(iii) If the basis for permitting the assertion under 1827.404–4(b)(2) is paragraph (b)(2)(iii), then the permission shall be granted by a contract modification that contains appropriate assurances that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain assignment of copyright if such contributions do not occur in order to prevent the computer software from being suppressed or abandoned by the contractor.

(iv) If the basis for permitting the assertion under 1827.404–4(b)(2) is paragraph (b)(2)(iv), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances as required by the Agency Counsel for Intellectual Property, or designee, including at the very least the right to obtain assignment of copyright in order to prevent the computer software from being suppressed or abandoned by the contractor.

(3) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at FAR 52.227–14 and without any obligation of confidentiality on the part of the Government unless, in accordance with 1827.404–4(b)(2)(iii), the contributions of the Contractor are considered ''substantial'' for the purposes of FAR 27.408 (*i.e.,* approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(d) If the contractor has not been granted permission to assert claim to copyright, paragraph (d)(4)(ii) of the clause at FAR 52.227–14, Rights in Data—General (as modified by 1852.227–14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee. The contracting officer may, in consultation with the center patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

1827.409 Solicitation provisions and contract clauses.

(b)(1) When the clause at FAR 52.227–14, Rights in Data—General, is included in a solicitation or contract, it shall be modified as set forth at 1852.227–14. In contracts for basic or applied research to be performed solely by universities and colleges, the contracting officer shall consult with the center patent or intellectual property counsel regarding the addition of subparagraph (4) as set forth at 1852.227–14 to paragraph (d) of the clause at FAR 52.227–14 and they will consider the guidance provided at FAR 27.404–4.

(2) The contracting officer, with the concurrence of the center patent or intellectual property counsel, is the approval authority for use of Alternate I of the clause at FAR 52.227–14. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(3) The contracting officer shall review the disclosure purposes listed in FAR 27.404–2(c)(1)(i) through (v) and, in consultation with the center patent or intellectual property counsel, determine which disclosure purposes apply based on the nature of the acquisition, and add them to paragraph (g)(3) of Alternate II of the clause at FAR 52.227–14, Rights in Data—General. If none apply, the CO shall insert ''none''. Additions to those specific purposes listed may be made only with the approval of the procurement officer and concurrence of the center patent or intellectual property counsel.

(4) The contracting officer shall consult with the center patent or intellectual property counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III of the clause at FAR 52.227–14, Rights in Data—General. Where it is impractical to actually modify the notice of Alternate III, such greater or lesser rights may be indicated by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(5) The contracting officer, with the concurrence of the center patent or intellectual property counsel, is the approval authority for the use of Alternate IV in any contract other than a contract for basic or applied research to be performed solely by a college or university (but not for the management or operation of Government facilities). See the guidance at FAR 27.404–3(a)(3).

(d) The clause at 52.227–16, Additional Data Requirements, shall be used in all solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be $500,000 or less), unless after consultation between the Contracting Officer and the center patent or intellectual property counsel a determination is made otherwise.

(h) Normally the clause at 52.227–20, Rights in Data—SBIR Program, is the only data rights clause used in SBIR contracts. However, if during the performance of an SBIR contract (Phase I, Phase II, or Phase III) the need arises for NASA to obtain delivery of limited rights data or restricted computer software as defined in the clause at FAR 52.227–20, and the contractor agrees to such delivery, the limited rights data or restricted computer software may be acquired by modification of the contract (for example, by adding the clause at FAR 52.227–14 with any appropriate Alternates and making it applicable only to the limited rights data or restricted computer software to be delivered), using the rights and related restrictions as set forth in FAR 27.404–2 as a guide.

(m)(1) The contracting officer, shall consult with the center patent or intellectual property counsel and the installation software release authority to determine when to use the clause at 1852.227–88, Government-furnished computer software and related technical data.

(2) The clause may be included in, or added to, the contract when it is contemplated that computer software and related technical data will be provided to the contractor as Government-furnished information for use in performing the contract.

PART 1828—BONDS AND INSURANCE

■ 37. The authority citation for part 1828 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

Subpart 1828.1 [Removed]

■ 38. Remove subpart 1828.1.

■ 39. In section 1828.311–1, the introductory text is revised to read as follows:

1828.311–1 Contract clause.

The contracting officer shall insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated unless—

* * * * *

PART 1831—CONTRACTOR COST PRINCIPLES AND PROCEDURES

■ 40. The authority citation for part 1831 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1831.205–671 [Amended]

■ 41. Section 1831.205–671 is amended by removing the phrase ''in excess of $500,000'' and replacing it with ''expected to exceed the threshold for requiring certified cost and pricing data as set forth in FAR 15.403–4.''

PART 1832—CONTRACT FINANCING

■ 42. The authority citation for part 1832 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

■ 43. In section 1832.705–270, paragraph (a) is revised to read as follows:

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 contracts or task orders.

* * * * *

1832.1110 [Amended]

■ 44. In section 1832.1110, remove and reserve paragraph (a).

PART 1834—MAJOR SYSTEM ACQUISITION

■ 45. The authority citation continues to read as follows:

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

■ 46. Amend section 1834.201 as follows:

■ a. In paragraph (a) introductory text, remove the word ''acquisitions'' in the first sentence and add in its place the word ''contracts''.

■ b. In paragraph (a)(3), add the phrase ''Earned Value Management'' before the acronym EVM and add parentheses around EVM.

■ c. In the first sentence of paragraph (b), remove the phrase ''earned value management'' and add in its place ''EVM'', and remove the phrase ''a schedule management system'' and add in its place ''an Integrated Master Schedule (IMS)''.

■ d. In paragraph (d), add the phrase ''and the applicable NASA Center EVM Focal Point (*http://evm.nasa.gov/council.html*)'' between ''office'' and ''in determining''.

■ e. In paragraph (e) remove ''American National Standards Institute/Electronics Industries Alliance Standard'' and the parentheses around the acronym ANSI/EIA.

■ f. Add paragraph (f).

The addition reads as follows:

1834.201 Policy.

* * * * *

(f) As a minimum, and in accordance with NPD 7120.5, requirements initiators shall ensure that EVMS monthly reports are included as a deliverable in the acquisition package provided to the procurement office for implementation into contracts where EVMS applies. Additionally, the acquisition package shall include a Contract Performance Report (CPR), IMS and a Work Breakdown Structure (WBS) and the appropriate data requirements descriptions (DRDs) for implementation into the contract.

1834.203–70 [Amended]

■ 47. Amend 1834.203–70 by removing ''1834.201(a)(3)'' and adding in its place ''1834.201(c)'' following 1834.201 in the first sentence.

PART 1837—SERVICE CONTRACTING

■ 48. The authority citation for part 1837 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1837.203–70, 1837.203–71, and 1837.203–72 [Removed]

■ 49. Sections 1837.203–70, 1837.203–71, and 1837.203–72 are removed.

PART 1841—ACQUISITION OF UTILITY SERVICES

■ 50. The authority citation for this section continues to read as follows:

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

Subpart 1841–5 [Removed and Reserved]

■ 51. Remove and reserve Subpart 1841.5.

PART 1842—CONTRACT ADMINISTRATION

■ 52. The authority citation for part 1842 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1842.271 [Removed]

■ 53. Section 1842.271 is removed.

PART 1846—QUALITY ASSURANCE

■ 54. The authority citation continues to read as follows:

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

■ 55. Add Subpart 1846.1 to read as follows:

Subpart—1846.1 General

Sec.
1846.102 Policy.

Subpart—1846.1 General

1846.102 Policy.

(f) See NPR 8735.2, Section 2.1, concerning quality assurance for critical acquisition items. Generally, the quality assurance requirements set forth in the NPR for critical acquisition items are not allowed under Part 12 procedures. See FAR 12.208.

■ 56. Section 1846.670–1 is revised to read as follows:

1846.670–1 General.

This subpart contains procedures and instructions for use of the DD Form 250, Material Inspection and Receiving Report (MIRR), (DD Form 250 series equivalents, and commercial shipping/packing lists used to document Government contract quality assurance (CQA).

■ 57. Section 1846.670–2 is revised to read as follows:

1846.670–2 Applicability.

(a) This subpart applies to supplies or services acquired by or for NASA when the clause at 1852.246–72, Material Inspection and Receiving Report, is included in the contract.

■ 58. Section 1846.670–3 is revised to read as follows:

1846.670–3 Use.

(a) The DD Form 250 is a multipurpose report used for—

(1) Providing evidence of CQA at origin or destination;

(2) Providing evidence of acceptance at origin or destination;

(3) Packing lists;

(4) Receiving;

(5) Shipping; and

(6) Contractor invoice support.

(b) Do not use MIRRs for shipments—

(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or,

(2) Of contract inventory.

(c) The contractor prepares the DD Form 250, except for entries that an authorized Government representative is required to complete. The contractor shall furnish sufficient copies of the completed form, as directed by the Government Representative.

■ 59. Section 1846.670–5 is revised to read as follows:

1846.670–5 Forms.

An electronic copy of the DD Form 250 may be downloaded from the General Services Administration's Forms Library at *http://www.gsa.gov/portal/category/100000.*

■ 60. In section 1846.672–1, paragraphs (a)(1), (b), (c), (h), (j), (k), (r)(1) introductory text, (r)(1)(i), (r)(3), and (r)(4)(ii) and (xi) are revised to read as follows:

1846.672–1 Preparation Instructions.

(a) * * *

(1) Dates shall include nine spaces consisting of the four digits of the year, the first three letters of the month, and two digits for the date (*e.g.,* 2012SEP24).

* * *

(b) *Classified information.* Do not include classified information on the MIRR. MIRRs must not be classified.

(c) *Block 1—PROCUREMENT INSTRUMENT IDENTIFICATION (CONTRACT NUMBER).* Enter the ten-character, alpha-numeric procurement identifier of the contract.

* * * * *

(h) *Block 6—INVOICE.* 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 to reflect the actual date of invoice submission.

* * *

(j) *Block 8—ACCEPTANCE POINT.* Enter an ''S'' for origin or ''D'' for destination as specified in the contract as the point of acceptance.

(k) *Block 9—PRIME CONTRACTOR.* Enter the Commercial and Government Entity (CAGE) code and address.

* * * * *

(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 National Stock Number (NSN) 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.

* * * * *

(3) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt.__(State weight in pounds only).

(4) * * *

(ii) When an NSN 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.

* * * * *

(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 will 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.

* * * * *

1846–672–5 [Removed]

■ 61a. Section 1846.672–5 is removed.

1846.672–6 and 1846.672–7 [Redesignated as 1846.672–5 and 1846.672–6]

■ 61b. Sections 1846–672–6 and 1846–672–7 are redesignated as 1846–672–5 and 1846–672–6.

■ 62. Section 1846.674 is revised to read as follows:

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246–72, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced. The clause is not required for—

(1) Contracts awarded using simplified acquisition procedures;

(2) Negotiated subsistence contracts; or

(3) Contracts for which the deliverable is a scientific or technical report. Insert number of copies and distribution instructions in paragraph (a).

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 63. The authority citation continues to read as follows:

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

1851.102–70 [Removed]

■ 64. Remove section 1851.102–70.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 65. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1852.209–72 [Removed and Reserved]

■ 66. Remove and reserve section 1852.209–72.

■ 67. Section 1852.215.77 is amended by adding paragraphs (c), (d), and (e) to read as follows:

1852.215–77 Preproposal/Pre-Bid Conference.

* * * * *

PRE–PROPOSAL/PRE–BID CONFERENCE (MONTH/YEAR)

* * * * *

(c) Offerors, individuals, or interested parties who plan to attend the pre-proposal/pre-bid conference must provide the Contracting Officer in writing, at a minimum, full name of the attendee(s), identification of nationality (U.S. or specify other nation citizenship), Lawful Permanent Resident Numbers in the case of foreign nationals, affiliation and full office address/phone

number. Center-specific security requirements for this pre-proposal/pre-bid conference will be given to a company representative prior to the conference or will be identified in this solicitation as follows: (*fill-in*). Examples of specific identification information which may be required include state driver's license and social security number. Except for foreign nationals, the identification information must be provided at least (*fill-in*) working days in advance of the conference. This information shall be provided at least (*fill-in*) working days in advance of the conference for foreign nationals due to the longer badging and clearance processing time required. However, the Center reserves the right to determine foreign nationals may not be allowed on the Government site. The Government is not responsible for offerors' inability to obtain clearance within sufficient time to attend the conference. Due to space limitations, representation of any potential Offeror may not exceed (*fill-in)* company representatives/persons per Offeror. Any ''lobbying firm or lobbyist'' as defined in 2 U.S.C. 1602(9) and (10), or any Offeror represented by a lobbyist under the Lobbying Disclosure Act of 1995 shall be specifically identified.

(d) Visitors on NASA Centers are allowed to possess and use photographic equipment (including camera cell phones) and related materials EXCEPT IN CONTROLLED AREAS. Anyone desiring to use camera equipment during the conference should contact the Contracting Officer to determine if the site(s) to be visited is a controlled area.

(e) The Government will respond to questions regarding this procurement provided such questions have been received at least five (5) working days prior to the conference. Other questions will be answered at the conference or in writing at a later time. All questions, together with the Government's response, will be transmitted to all solicitation recipients via the government-wide point of entry (GPE). In addition, conference materials distributed at the preproposal/pre-bid conference will be made available to all potential offerors via the GPE using the NAIS Electronic Posting System.

(End of provision)

■ 68. Section 1852.215–81 is amended by:

■ a. Revising the chart in paragraph (a);

■ b. Adding a sentence at the end of paragraph (b); and

■ c. Revising paragraph (c).

The revisions and addition read as follows:

1852.215–81 Proposal Page Limitations.

(a) * * *

Proposal section (List each volume or section)	Page limit (Specify limit)	[Proposal subsection] (List each subsection)
		(e.g. Offeror's Subcontracting Plan should not exceed 20 pages)

(b) * * * Other limitations/instructions identified as follows: (*fill-in,* if there are other limitations/instructions).

(c) Identify any exclusions to the page limits that are excluded from the page counts specified in paragraph (a) of this provision (*e.g.* title pages, table of contents) as follows: (*fill-in*). In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

* * * * *

(End of provision)

1852.216–88 [Amended]

■ 69. Section 1852.216–88 is amended by:

■ a. Removing the words ''hardware'' and ''delivered'' in paragraph (a) introductory text;

■ b. Removing the word ''hardware'' and the second sentence in paragraph (a)(1);

■ c. Removing the word ''hardware'' in paragraph (c);

■ d. Removing the word ''hardware'' in paragraph (d);

■ e. Removing the word ''hardware'' in paragraph (f); and

■ f. Adding the word ''descriptor'' in paragraph (g)(1) between ''numbers(s)'' and ''and/or nomenclature''.

1852.217–70 [Removed and Reserved]

■ 70. Remove and reserve section 1852.217–70.

■ 71. In the introductory text in section 1852.217–71, the reference 1817.7302(a) is revised to read as 1817.7002(a), and the last sentence in paragraph (e) is removed.

■ 72a. Section 1852.219–11 is added to read as follows:

1852.219–11 Special 8(a) Contract Conditions.

As prescribed in 1819.811–3(a), insert the following clause in lieu of 52.219–11:

SPECIAL 8(a) CONTRACT CONDITIONS (MONTH/YEAR)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the National Aeronautics and Space Administration. Accordingly, the SBA is not a signatory to this contract. SBA does retain responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

_____

_____

_____

_____

(*insert name and address of cognizant SBA office*)

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract; provided, however, that the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with the SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The contractor agrees to notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Public Law 100–656, transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(End of clause)

■ 72b. Section 1852.219–18 is added to read as follows:

1852.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 1819.811–3(d), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (MONTH/YEAR)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the

Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The _____[*insert name of SBA's contractor*] will notify the_____[*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

1852–219–74 [Removed and Reserved]

■ 73. Remove and reserve section 1852.219–74.

■ 74. Section 1852.219–75 is revised to read as follows:

1852.219–75 Individual Subcontracting Reports.

As prescribed in 1819.708–70(b), insert the following clause:

INDIVIDUAL SUBCONTRACTING REPORTS (MONTH/YEAR)

When submitting Individual Subcontracting Reports in eSRS in accordance with FAR 52.219–9(l) (1), the contractor shall enter goals as a percentage of total contract value as well as a percentage of total subcontract dollars.

(End of clause)

1852–219–76 [Removed and Reserved]

■ 75. Remove and reserve section 1852.219–76.

1852–219–77 [Amended]

■ 76. In section 1852.219–77, (MAY 2009) is removed and (MONTH/YEAR) is added in its place, and remove the word ''certified'' in the second sentence of paragraph (b)(2).

■ 77. Section 1852.219–79 is amended by:

■ a. Removing the words ''(MAY 2009)'' are removed and adding in their place ''(MONTH/YEAR)'';

■ b. Revising in the second sentence of paragraph (a) ''NASA SBIR'' to read ''NASA SBIR/STTR''; and

■ c. Adding paragraph (b)(5).

The addition reads as follows:

1852.219–79 Mentor Requirements and Evaluation.

* * * * *

(b) * * *

(5) To what extent the mentor contributed to advancing the protégé's technical readiness level.

* * * * *

■ 78. Section 1852.223–71 is revised to read as follows:

1852.223–71 Authorization for Radio Frequency Use.

As prescribed in 1823.7101, insert the following clause:

AUTHORIZATION FOR RADIO FREQUENCY USE (MONTH/YEAR)

(a) The contractor or subcontractor shall obtain equipment authorization of use of radio frequencies required in support of this contract following the procedures in NPR 2570.1, NASA Radio Frequency (RF) Spectrum Management Manual.

(b) For any experimental, developmental, or operational equipment for which the appropriate equipment frequency authorization has not been made, the Contractor or subcontractor shall provide the technical and operating characteristics of the proposed electromagnetic radiating device to the NASA Center Facility Spectrum Manager during the initial planning, experimental, or developmental phase of contractual performance.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852–223–73 [Amended]

■ 79. Section 1852.223–73 is amended as follows:

■ a. Remove (NOVEMBER 2004) and add (MONTH/YEAR) in its place.

■ b. In paragraph (a), the reference ''NPR 8715.3'' is revised to read ''NASA General Safety Program Requirements Manual, Appendix E''.

■ c. In Alternate, the reference ''NPR 8715.3'' is revised to read ''NASA General Safety Program Requirements Manual, Appendix E''.

■ 80. Section 1852.227–11 is revised to read as follows:

1852.227–11 Patent Rights—Ownership by the Contractor (DATE).

As prescribed at 1827.303(b)(1), modify the clause at FAR 52.227–11 by:

(1) Adding the following subparagraphs (5) and (6) to paragraph (c) of the basic clause;

(2) By adding the following subparagraph (iii) to paragraph (e)(1) of the basic clause;

(3) By using the following paragraph (j) in lieu of paragraph (j) of the basic clause; and

(4) By using the following subparagraph (2) in lieu of subparagraph (k)(2) of the basic clause:

(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.*

(6) In addition to the above, the Contractor shall provide the New Technology Representative identified in this contract at 1852.227–72 the following:

(i) An interim new technology summary report every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, listing all subject inventions required to be disclosed during the period or certifying that there were none.

(ii) A final new technology summary report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(End of addition)

(iii) The Contractor shall, through employee agreements or other suitable Contractor policy, require that its employees ''will assign and do hereby assign'' to the Contractor all right, title, and interest in any subject invention under this Contract.

(End of addition)

(j) For the purposes of this clause, communications between the Contractor and the Government shall be as specified in the NASA FAR Supplement at 1852.227–72, Designation of New Technology Representative and Patent Representative.

(End of addition)

(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, 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. At all tiers, the New Technology—Other than a Small Business Firm or Nonprofit Organization clause shall be modified to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(End of substitution)

■ 81. Section 1852.227–14 is revised to read as follows:

1852.227–14 Rights In Data—General (DATE).

As prescribed in 1827.409(b)(1), modify the clause at FAR 52.227–14 by: (1) adding the following subparagraph (iv) to paragraph (c)(1) of the basic clause; (2) by adding the following provision to the end of Alternate IV if used in lieu of paragraph (c)(1) of the basic clause; and (3) by adding subparagraph (4) to paragraph (d) of the basic clause:

(iv) The contractor shall mark each scientific and technical article based on or containing data first produced in the performance of this contract and submitted for publication in academic, technical or professional journals, symposia proceedings or similar works with a notice, similar in all material respects to the following, on the cover or first page of the article, reflecting the Government's non-exclusive worldwide license in the copyright.

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(End of Notice)

(End of addition)

The contractor shall mark each scientific and technical article based on or containing data first produced in the performance of this contract and submitted for publication in academic, technical or professional journals, symposia proceedings or similar works with a notice, similar in all material respects to teh following, on the cover or first page of the article, reflecting the Government's non-exclusive worldwide license in the copyright.

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(End of Notice)

(End of addition)

(4)(i) The Contractor agrees not to assert claim to copyright, publish or release to others any computer software first produced in the performance of this contract unless the Contracting Officer authorizes through a contract modification.

(ii) The prohibition on ''release to others,'' as set forth in (d)(4)(i), does not prohibit release to another Federal Agency for its use or its contractors' use, as long as any such release is consistent with any restrictive markings on the software. Any restrictive markings on the software shall take precedence over the aforementioned release. Any release to a Federal Agency shall limit use to the Federal Agency or its contractors for Government purposes only. Any other release shall require the Contracting Officer's prior written permission.

(iii) 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)(4)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, a claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(End of addition)

■ 82. Section 1852.227–70 is revised to read as follows:

1852.227–70 New Technology—Other than a Small Business Firm or Nonprofit Organization.

As prescribed in 1827.303(d)(1), insert the following clause:

NEW TECHNOLOGY (MONTH/YEAR)

(a) *Definitions.* As used in this clause—

''Administrator'' means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

''Made'' means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

''Nonprofit organization'' 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'' 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 the 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'' means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable 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'' 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 criteria and size standard adopted in the FAR Subpart 2.1 definitions for ''small business concern'' and for ''small business subcontractor'' will be used.)

''Subject invention'' 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)(A) or (1)(B) of Section 20135(b) of the National Aeronautics and Space Act (51 U.S.C. 20135(b)) (hereinafter ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item in accordance with paragraph (e)(2) of this clause 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 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 as described in paragraph (b)(3) of this clause, 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)(A) or (1)(B) of Section 20135(b) 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)(A) or (1)(B) of Section 20135(b) 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 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive all or any part of 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)(A) or (1)(B) of Section 20135(b) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, provide procedures for the Contractor to submit petitions (requests) for waiver of rights and guidance for NASA in acting on petitions for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, the Contractor 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 invention or class of inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights has been granted, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention in which the Government has title and in any resulting patent, 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. The Contractor's 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 revoking or modifying the Contractor's 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) 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) Contractor's obligations.

(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—Other Than a Small Business Firm or Nonprofit Organization 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 shall disclose in writing 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—Other Than a Small Business Firm or Nonprofit Organization clause or within six months after the Contractor becomes aware that a reportable item has been made, whichever is earlier, 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 identify the inventor(s) or innovator(s) and this contract under which the reportable item was made. 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, sale or offer for 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 sale, offer for 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 computer 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 new technology summary 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).

(ii) A final new technology summary 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 paragraph 27.302(j) 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 Contracting Officer may require the Contractor 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 new technology summary reports pursuant to paragraph (e)(4)(i) of this clause or a final new technology summary report pursuant to paragraph (e)(4) (ii) 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 new technology summary report pursuant to paragraph (e)(4)(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; or

(ii) Include the clause at FAR 52.227–11, as modified by 1852.227–11, (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; and

(iii) Modify the applicable clause in any subcontract hereunder (regardless of tier) to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor, the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(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 hereunder (regardless of tier) by identifying the subcontractor, the applicable patent rights clause in the subcontract, 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)

■ 83. Section 1852.227–71 is revised to read as follows:

1852.227–71 Requests for Waiver of Rights to Inventions.

As prescribed in 1827.303(d)(2), insert the following provision in all solicitations that include the clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization:

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (MONTH/YEAR)

(a) In accordance with Section 20135(g) of the National Aeronautics and Space Act (51 U.S.C. 20135(g)) (hereinafter ''the Act'') and the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, NASA may waive all or any part of the rights of the United States with respect to any invention or class of 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 if the Administrator determines that the interests of the United States will be served thereby. Waiver of rights in inventions made or that may be made under such NASA contract or subcontract may be requested at different time periods. Advance waiver of rights to any invention or class of 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 (or such longer period as may be specified by the Contracting Officer). In addition, waiver of rights to an individually identified invention or to a class of inventions 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. 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 individually identified invention or class of inventions; 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. For individually identified inventions or a class of inventions, the petition shall identify each invention with particularity (*e.g.,* by NASA's assigned number to the Disclosure of Invention and New Technology report or by title and inventorship). For advance waivers, the petition shall identify the invention or class of inventions that the Contractor believes will be made under the contract and for which waiver is being requested. To meet the statutory standard of ''any invention or class

of inventions,'' the petition must be directed to a single invention or to inventions directed to a particular process, machine, manufacture, or composition of matter, or to a narrowly-drawn, focused area of technology. Additionally, each petition 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 name, address, and telephone number of the party with whom to communicate when the request is acted upon; the signature of the petitioner or authorized representative; and the date of signature. In general, waivers are granted in order to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of this new technology for commercial purposes and the public benefit. Thus, it is preferable that the petition also include a description of the Contractor's plan for commercializing the invention or class of inventions for which waiver is being requested (*e.g.,* identify specific fields of use).

(c) Petitions for advance waiver of rights should, preferably, be included with the proposal, or at least in advance of contract negotiations. Petitions for advance waiver, prior to contract execution, shall be submitted to the Contracting Officer. All other petitions shall 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)

■ 84. Section 1852.227–72 is revised to read as follows:

1852.227–72 Designation of New Technology Representative and Patent Representative.

As prescribed in 1827.303(d)(3), insert the following clause:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (MONTH/YEAR)

(a) For purposes of administration of the clause of this contract entitled ''New Technology—Other than a Small Business Firm or Nonprofit Organization'' or ''Patent Rights—Ownership by the Contractor,'' whichever is included, the installation New Technology and Patent Representatives identified at *http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html* are hereby designated by the Contracting Officer to administer such clause for the appropriate installation:

(b) Disclosures of reportable items and of subject inventions, interim new technology summary reports, final new technology summary reports, utilization reports, and other reports required by the applicable ''New Technology'' or ''Patent Rights—Ownership by the Contractor'' clause, as well as any correspondence with respect to such matters, shall 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 shall be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a ''New Technology—Other than a Small Business Firm or Nonprofit Organization'' clause or ''Patent Rights—Ownership by the Contractor'' clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the aforementioned representatives are set forth in 1827.305–270 of the NASA FAR Supplement.

(End of clause)

■ 85. Section 1852.227–84 is revised to read as follows:

1852.227–84 Patent Rights Clauses.

As prescribed in 1827.303(a)(1), the contracting officer shall insert the following provision in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization:

PATENT RIGHTS CLAUSES (MONTH/YEAR)

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)

■ 86. Section 1852.227–85 is revised to read as follows:

1852.227–85 Invention Reporting and Rights—Foreign.

As prescribed in 1827.303(e)(1), insert the following clause:

INVENTION REPORTING AND RIGHTS—FOREIGN (MONTH/YEAR)

(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 foreign country in which this contract is to be performed. As to such foreign country, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration 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 foreign country for each such invention. Where Contractor does not elect to file such patent application for any such invention in that foreign country, full right, title and interest in and to such invention in that foreign country 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 required to be reported 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 (suitably modified to substitute the subcontractor in place of the Contractor) and the name and address of the Contracting Officer.

(End of Clause)

■ 87. Section 1852.227–86 is revised to added to read as follows:

1852.227–86 Commercial Computer Software License.

As prescribed in 1827.409(g), insert the following clause:

COMMERCIAL COMPUTER SOFTWARE LICENSE (MONTH/YEAR)

(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. Those portions of the vendor's/contractor's standard commercial license or lease agreement that conflict with Federal law (*e.g.,* indemnity provisions or choice of law provisions that specify other than Federal law) are not incorporated into and made a part of this purchase order/contract and do not apply to any computer software delivered under this purchase order/contract.

(b) If the vendor/contractor does not propose its standard commercial software license until after this purchase order/contract has been issued, or until 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, no document associated with the aforementioned activities shall alter the terms of this clause unless such document explicitly references this clause and an intent to amend this clause and is signed by the NASA Contracting Officer.

(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, or Government contractors or their subcontractors at any tier, 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 paragraphs (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 otherwise available without disclosure restrictions, it is licensed to the Government, without disclosure restrictions, with the rights in paragraphs (d)(2) and (3) of this clause.

(5) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are set forth in Government Contract No. _____.

(End of clause)

■ 88. Section 1852.227–88 is added to read as follows:

1852.227–88 Government-furnished computer software and related technical data.

As prescribed in 1827.409(m), insert the following clause:

(a) *Definitions.* As used in this clause—

''*Government-furnished computer software''* or ''*GFCS''* means computer software:

(1) In the possession of, or directly acquired by, the Government whereby the Government has title or license rights thereto; and

(2) Subsequently furnished to the Contractor for performance of a Government contract.

''*Computer software,''* ''*data''* and ''*technical data''* have the meaning provided in the Federal Acquisition Regulations (FAR) Subpart 2.1—Definitions or the Rights in Data—General clause (FAR 52.227–14).

(b) The Government shall furnish to the Contractor the GFCS described in this contract or in writing by the Contracting Officer. The Government shall furnish any related technical data needed for the intended use of the GFCS.

(c) *Use of GFCS and related technical data.* The Contractor shall use the GFCS and related technical data, and any modified or enhanced versions thereof, only for performing work under this contract unless otherwise provided for in this contract or approved in writing by the Contracting Officer.

(1) The Contractor shall not, without the express written permission of the Contracting Officer, reproduce, distribute copies, prepare derivative works, perform publicly, display publicly, release, or disclose the GFCS or related technical data to any person except for the performance of work under this contract.

(2) The Contractor shall not modify or enhance the GFCS unless this contract specifically identifies the modifications and enhancements as work to be performed. If the GFCS is modified or enhanced pursuant to this contract, the Contractor shall provide to the Government the complete source code, if any, and all related documentation of the modified or enhanced GFCS.

(3) Allocation of rights associated with any GFCS or related technical data modified or enhanced under this contract shall be defined by the FAR Rights in Data clause(s) included in this contract (as modified by any applicable NASA FAR Supplement clauses). If no Rights in Data clause is included in this contract, then the FAR Rights in Data—General (52.227–14) as modified by the NASA FAR Supplement (1852.227–14) shall apply to all data first produced in the performance of this contract and all data delivered under this contract.

(4) The Contractor may provide the GFCS, and any modified or enhanced versions thereof, to subcontractors as necessary for the performance of work under this contract. Before release of the GFCS, and any modified or enhanced versions thereof, to such subcontractors (at any tier), the Contractor shall insert, or require the insertion of, this clause, including this paragraph (c)(4), suitably modified to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(d) The Government provides the GFCS in an ''AS–IS'' condition. The Government makes no warranty with respect to the serviceability and/or suitability of the GFCS for contract performance.

(e) The Contracting Officer may by written notice, at any time—

(1) Increase or decrease the amount of GFCS under this contract;

(2) Substitute other GFCS for the GFCS previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract;

(3) Withdraw authority to use the GFCS or related technical data; or

(4) Instruct the Contractor to return or dispose of the GFCS and related technical data.

(f) *Title to or license rights in GFCS.* The Government shall retain title to or license rights in all GFCS. Title to or license rights in GFCS shall not be affected by its incorporation into or attachment to any data not owned by or licensed to the Government.

(g) *Waiver of Claims and Indemnification.* The Contractor agrees to waive any and all claims against the Government and shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of the GFCS and related technical data by the Contractor, a subcontractor, or by any person to whom the Contractor has released or disclosed such GFCS or related technical data.

(h) *Flow-down of Waiver of Claims and Indemnification.* In the event a contract includes this NASA FAR Supplement clause 1852.227–88, the Contractor shall include the foregoing clause 1852.227–88(g), suitably modified to identify the parties, in all subcontracts, regardless of tier, which involve use of the GFCS and/or related technical data in any way. At all tiers, the clause shall be modified to define GFCS as it is defined herein and to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause. In subcontracts, at any tier, the Government, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause 1852.227–88 constitute a contract between the subcontractor and the Government with respect to the matters covered by the clause.

(End of clause)

1852.228–73 [Removed]

■ 89. Section 1852.228–73 is removed.

■ 90. In section 1852.231–71, paragraph (d) is revised to read as follows:

1852.231–71 Determination of Compensation Reasonableness.

* * * * *

DETERMINATION OF COMPENSATION REASONABLENESS (MONTH/YEAR)

* * * * *

(d) The offeror shall require all service subcontractors provide, as part of their proposal, the information identified in (a) through (c) of this provision for cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value expected to exceed the threshold for requiring certified cost or pricing data as set forth in FAR 15.403–4.

(End of provision)

■ 91. In section 1852.232–70, paragraphs (a)(2) and (c)(3) are revised to read as follows:

1852.232–70 NASA Modification of FAR 52.232–12.

* * * * *

NASA Modification of FAR 52.232–12 (Month/Year)

(a) * * *

(2) In paragraph (m)(1), delete ''in the form prescribed by the administering office'' and substitute ''and Standard Form 425, Federal Financial Report.''

* * * * *

(c) * * *

(3) In paragraph (j)(1), insert between ''statements,'' and ''and'' ''together with Standard Form 425, Federal Financial Report''.

* * * * *

■ 92. Section 1852.234–1 is amended as follows:

■ a. Paragraph (a) is amended by adding the phrase ''(current version at time of solicitation)'' after the word ''Systems'' at the end of the paragraph.

■ b. Paragraph (b)(1)(iii) and paragraph (b)(1)(vii) are revised.

The revisions read as follows:

1852.234–1 Notice of Earned Value Management System.

(b) * * *

(1) * * *

(iii) Provide a matrix that correlates each guideline in ANSI/EIA 748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures;

* * * * *

(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. Guidance can be found in the] Department of Defense Earned Value Management Implementation Guide (*https://acc.dau.mil/CommunityBrowser.aspx?id=19557*) as well as in the National Defense Industrial Association (NDIA) Earned Value Management Systems Acceptance Guide (*http://www.ndia.org/divisions/divisions/procurement/pages/programsystemcommittee.aspx*).

* * * * *

■ 93. Section 1852.234–2 is amended as follows:

■ a. Paragraph (a)(2) is revised.

■ b. The first sentence in paragraph (b) is amended by removing the phrase ''cost/schedule control system'' and adding ''EVMS'' in its place;

■ c. Paragraph (c) is amended by adding a sentence at the end of the paragraph.

The revision and addition read as follows:

1852.234–2 Earned Value Management System.

(a) * * *

(2) Earned Value Management (EVM) procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the data requirements descriptions in the contract.

* * * * *

(c) * * * See the NASA IBR Handbook (*http://evm.nasa.gov/handbooks.html*) for guidance.

* * * * *

1852.237–72 and 1852.237–73 [Removed and Reserved]

■ 94. Sections 1852.237–72 and 1852.237–73 are removed.

1852.241–70 [Removed and Reserved]

■ 95. Remove and reserve section 1852.241–70.

1852.242–70 [Amended]

■ 96. Section 1852.242–70 is removed

■ 97. In section 1852.246–72, paragraph (a) is revised to read as follows:

1852.246–72 Material Inspection and Receiving Report.

* * * * *

(a) At the time of each delivery to the Government under this contract, the Contractor shall prepare and furnish a Material Inspection and Receiving Report (DD Form 250 series). The form(s) shall be prepared and distributed as follows:
((Insert number of copies and distribution instructions.) _____

* * * * *

(End of clause)

1852.249–72 [Removed]

■ 98. Section 1852.249–72 is removed.

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