

## **PARTS 1700–1732 [RESERVED]**

### **PART 1733—PROTESTS, DISPUTES, AND APPEALS**

#### **Subpart 1733.2—Disputes and Appeals**

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

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

#### **Subpart 1733.2—Disputes and Appeals**

##### **1733.203 Applicability.**

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

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

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

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

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

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

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

##### **1733.209 Suspected fraudulent claims.**

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

##### **1733.211 Contracting officer's decision.**

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

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

##### **1733.212 Contracting officer's duties upon appeal.**

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

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

##### **1733.214 Contract clause.**

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

## **PARTS 1734–1799 [RESERVED]**



# CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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

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## SUBCHAPTER A—GENERAL

### PART 1800 [RESERVED]

### PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.

1801.000 Scope of part.

#### Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority.

1801.104 Applicability.

1801.105 Issuance.

1801.105-1 Publication and code arrangement.

1801.105-2 Arrangement of regulations.

1801.106 OMB approval under the Paperwork Reduction Act.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### 1801.000 Scope of part.

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

#### Subpart 1801.1—Purpose, Authority, Issuance

##### 1801.103 Authority. (NASA supplements paragraph (a))

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

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

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

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

##### 1801.104 Applicability.

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

##### 1801.105 Issuance.

##### 1801.105-1 Publication and code arrangement.

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

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

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

[69 FR 21762, Apr. 22, 2004, as amended at 83 FR 28386, June 19, 2018]

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

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

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

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

**1801.106**

**1801.106 OMB approval under the Paperwork Reduction Act.**

The following OMB control numbers apply:

NFS Segment	OMB control No.
1823 .....	2700-0089
1827 .....	2700-0052
1852.223-70 .....	2700-0160
NF 533 .....	2700-0003
NF 1018 .....	2700-0017

[81 FR 75345, Oct. 31, 2016]

**PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 1803.1—Safeguards**

Sec.

- 1803.104 Procurement integrity.
- 1803.104-1 Definitions.

**Subpart 1803.9—Contractor Employee Whistleblower Protections**

- 1803.900 Scope of subpart.
- 1803.901 Definition.
- 1803.903 Policy.
- 1803.904 Procedures for filing complaints.
- 1803.905 Procedures for investigating complaints.
- 1803.906 Remedies.
- 1803.907 Classified information.
- 1803.970 Contract clause.

**Subpart 1803.70—IG Hotline Posters**

- 1803.7000 Policy.
- 1803.7001 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1803.1—Safeguards**

**1803.104 Procurement integrity.**

**1803.104-1 Definitions.**

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

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

**Subpart 1803.9—Contractor Employee Whistleblower Protections**

SOURCE: 79 FR 43959, July 29, 2014, unless otherwise noted.

**1803.900 Scope of subpart.**

This subpart applies to NASA instead of FAR subpart 3.9.

(a) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(b) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

- (1) Relates to an activity or an element of the intelligence community; or
- (2) Was discovered during contract or subcontract services provided to an element of the intelligence community.

**1803.901 Definition.**

*Abuse of authority*, as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of NASA or the successful performance of a NASA contract.

**1803.903 Policy.**

(a) *Policy*. 10 U.S.C. 2409 prohibits contractors or subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a NASA contract, a gross waste of NASA funds, an abuse of authority relating to a NASA contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a NASA contract (including the competition for or negotiation of a contract).

Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Entities to whom disclosure may be made:

(1) A Member of Congress or a representative of a committee of Congress.

(2) The NASA Inspector General or any other Inspector General that has oversight over contracts awarded by or on behalf of NASA.

(3) The Government Accountability Office.

(4) A NASA employee responsible for contract oversight or management.

(5) An authorized official of the Department of Justice or other law enforcement agency.

(6) A court or grand jury.

(7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) *Disclosure clarified.* An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a NASA contract shall be deemed to have made a disclosure.

(d) *Contracting officer actions.* A contracting officer who receives a complaint of reprisal of the type described in paragraph (a) of this section shall forward it to legal counsel and to the NASA Inspector General.

#### **1803.904 Procedures for filing complaints.**

(a) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 1803.903 may file a complaint with the Inspector General of NASA.

(b) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(c) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not known, a description reasonably sufficient to identify the contract(s) involved;

(3) The violation of law, rule, or regulation giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(5) The specific nature and date of the reprisal.

#### **1803.905 Procedures for investigating complaints.**

(a) Unless the NASA Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 1803.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the NASA Inspector General will investigate the complaint.

(b) If the NASA Inspector General determines that a complaint merits further investigation, the NASA Inspector General will—

(1) Notify the complainant, the contractor alleged to have committed the violation, and the head of the Agency;

(2) Conduct an investigation; and

(3) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the Agency.

(c) The NASA Inspector General—

(1) Will determine that the complaint is frivolous or will submit the report addressed in paragraph (b) of this section within 180 days after receiving the complaint; and

(2) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, to which the person submitting the complaint agrees.

(d) The NASA Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(1) Made with the consent of the person alleging reprisal;

(2) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act)

or as required by any other applicable Federal law; or

(3) Necessary to conduct an investigation of the alleged reprisal.

(e) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the NASA Inspector General, decision by the head of the Agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

#### 1803.906 Remedies.

(a) Not later than 30 days after receiving a NASA Inspector General report in accordance with 1803.905, the head of the Agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 1803.903 and shall either issue an order denying relief or shall take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the Agency.

(b) If the head of the Agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 1803.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(1) The complainant shall be deemed to have exhausted all administrative

remedies with respect to the complaint; and

(2) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(c) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the Agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(d) Any person adversely affected or aggrieved by an order issued by the head of the Agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to chapter 7 of title 5, United States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(e) The rights and remedies provided for in this subpart may not be waived



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by any agreement, policy, form, or condition of employment.

[79 FR 43959, July 29, 2014, as amended at 83 FR 28386, June 19, 2018]

### 1803.907 Classified information.

Nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

### 1803.970 Contract clause.

Use the clause at 1852.203-71, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

## Subpart 1803.70—IG Hotline Posters

### 1803.7000 Policy.

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

[66 FR 29727, June 1, 2001]

### 1803.7001 Contract clause.

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

[66 FR 29727, June 1, 2001]

## PART 1804—ADMINISTRATIVE MATTERS

### Subpart 1804.1—Contract Executive

Sec.

1804.170 Contract effective date.

### Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.404-70 Contract clause.

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

1804.470-1 Scope.

1804.470-2 Policy.

1804.470-3 IT security requirements.

1804.470-4 Contract clauses.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

## Subpart 1804.1—Contract Execution

### 1804.170 Contract effective date.

“Contract effective date” means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document. Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205-32) and the clause prescribed at 1831.205-70 is used.

[83 FR 28386, June 19, 2018]

## Subpart 1804.4—Safeguarding Classified Information Within Industry

### 1804.404-70 Contract clause.

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

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

### 1804.470-1 Scope.

This section implements NASA's acquisition requirements pertaining to Federal policies for the security of unclassified information and information systems. Federal policies include the Federal Information System Management Act (FISMA) of 2002, Homeland Security Presidential Directive (HSPD) 12, Clinger-Cohen Act of 1996 (40 U.S.C. 1401 *et seq.*), OMB Circular A-130, Management of Federal Information Resources, and the National Institute of

## 1804.470-2

Standards and Technology (NIST) security requirements and standards. These requirements safeguard IT services provided to NASA such as the management, operation, maintenance, development, and administration of hardware, software, firmware, computer systems, networks, and telecommunications systems.

[72 FR 26561, May 10, 2007]

### 1804.470-2 Policy.

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

[72 FR 26561, May 10, 2007]

### 1804.470-3 IT security requirements.

(a) These IT security requirements cover all NASA awards in which IT plays a role in the provisioning of services or products (*e.g.*, research and development, engineering, manufacturing, IT outsourcing, human resources, and finance) that support NASA in meeting its institutional and mission objectives. These requirements are applicable when a contractor or subcontractor must obtain physical or electronic access beyond that granted the general public to NASA's computer systems, networks, or IT infrastructure. These requirements are applicable when NASA information is generated, stored, processed, or exchanged with NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a

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NASA or a contractor/subcontractor's information system.

(b) The Applicable Documents List (ADL) should consist of all NASA Agency-level IT Security and Center IT Security Policies applicable to the contract. Documents listed in the ADL as well as applicable Federal IT Security Policies are available at the NASA IT Security Policy Web site at: <http://www.nasa.gov/offices/ocio/itsecurity/index.html>.

[76 FR 4080, Jan. 24, 2011]

### 1804.470-4 Contract clause.

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

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

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

(b) Parts of the clause and referenced ADL may be waived by the contracting officer if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contractor Officer will notify the contractor, by contract modification, which parts of the clause or provisions of the ADL are waived.

[76 FR 4080, Jan. 24, 2011]

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

### PART 1805—PUBLICIZING CONTRACT ACTIONS

#### Subpart 1805.3—Synopsis of Contract Awards

Sec.  
1805.303 Announcement of contract awards.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1805.3—Synopsis of Contract Awards

##### 1805.303 Announcement of contract awards.

(a)(i) In lieu of the threshold cited in FAR 5.303(a), a NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, including unexercised options, of \$5 million or greater.

[80 FR 36720, June 26, 2015]

### PART 1806—COMPETITION REQUIREMENTS

#### Subpart 1806.2—Full and Open Competition After Exclusion of Sources

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

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1806.2—Full and Open Competition After Exclusion of Sources

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

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

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

### PART 1807—ACQUISITION PLANNING

#### Subpart 1807.72—Acquisition Forecasting

Sec.  
1807.7200 Policy.  
1807.7201 Definitions.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1807.72—Acquisition Forecasting

##### 1807.7200 Policy.

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

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

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

(3) Make available such forecasts to the public.

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

[69 FR 21763, Apr. 22, 2004, as amended at 80 FR 36720, June 26, 2015]

##### 1807.7201 Definitions.

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

*Contract opportunity* means planned new contract awards exceeding the simplified acquisition threshold (SAT).

[61 FR 47068, Sept. 6, 1996, as amended at 80 FR 36720, June 26, 2015]

**PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**Subpart 1809.1—Responsible Prospective Contractors**

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1808.8—Acquisition of Printing and Related Supplies**

**1808.870 Contract clause.**

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

**PART 1809—CONTRACTOR QUALIFICATIONS**

**Subpart 1809.1—Responsible Prospective Contractors**

Sec.

1809.104-4 Subcontractor responsibility.

1809.105-2 Determinations and documentation.

**Subpart 1809.2—Qualifications Requirements**

1809.206 Acquisitions subject to qualification requirements.

1809.206-1 General.

**Subpart 1809.4—Debarment, Suspension, and Ineligibility**

1809.403 Definitions.

**Subpart 1809.5—Organizational and Consultant Conflicts of Interest**

1809.505-4 Obtaining access to sensitive information.

1809.507 Solicitation provisions and contract clause.

1809.507-2 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**1809.104-4 Subcontractor responsibility.**

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

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

**1809.105-2 Determinations and documentation.**

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible, which includes the basis for the determination. Notification provides the prospective contractor with the opportunity to take corrective action prior to future solicitations.

[76 FR 72328, Nov. 23, 2011]

**Subpart 1809.2—Qualification requirements**

**1809.206 Acquisitions subject to qualification requirements.**

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

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

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

**Subpart 1809.4—Debarment, Suspension, and Ineligibility**

**1809.403 Definitions.**

For purposes of FAR subpart 9.4 and this subpart, the Deputy General Counsel is the "debarment official," the

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“suspending official,” and the agency head’s “designee.”

[81 FR 12420, Mar. 9, 2016]

**Subpart 1809.5—Organizational and Consultant Conflicts of Interest**

**1809.505-4 Obtaining access to sensitive information.**

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

[70 FR 35554, June 21, 2005]

**1809.507 Solicitation provisions and contract clause.**

**1809.507-2 Contract clause.**

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

**PART 1811—DESCRIBING AGENCY NEEDS**

**AUTHORITY:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

**SOURCE:** 65 FR 37062, June 13, 2000], unless otherwise noted.

**Subpart 1811.4—Delivery or Performance Schedules**

**1811.404-70 NASA contract clauses.**

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

**PART 1812—ACQUISITION OF COMMERCIAL ITEMS**

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

Sec.

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

**Subpart 1812.70—Commercial Space Hardware or Services**

1812.7000 Anchor tenancy contracts.

**AUTHORITY:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

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

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

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

(A) 1852.204-75, Security Classification Requirements.

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(B) 1852.204–76, Security Requirements for Unclassified Information Technology Resources.

(C) 1852.215–84, Ombudsman.

(D) 1852.216–80, Task Order Procedures (Alternate I).

(E) 1852.216–88, Performance Incentive.

(F) 1852.219–73, Small Business Subcontracting Plan.

(G) 1852.219–75, Individual Subcontracting Reports.

(H) 1852.223–70, Safety and Health.

(I) 1852.223–71, Frequency Authorization.

(J) 1852.223–72, Safety and Health (Short Form).

(K) 1852.223–73, Safety and Health Plan.

(L) 1852.223–75, Major Breach of Safety and Security (Alternate I).

(M) 1852.225–70, Export Licenses.

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

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

(P) 1852.237–70, Emergency Evacuation Procedures.

(Q) 1852.237–72, Access to Sensitive Information.

(R) 1852.237–73, Release of Sensitive Information.

(S) 1852.246–72, Material Inspection and Receiving Report.

(T) 1852.246–74, Counterfeit Electronic Part Detection and Avoidance.

(U) 1852.247.71, Protection of the Florida Manatee.

[80 FR 36720, June 26, 2015, as amended at 81 FR 10520, Mar. 1, 2016; 85 FR 52927, Aug. 28, 2020]

### Subpart 1812.70—Commercial Space Hardware or Services

#### 1812.7000 Anchor tenancy contracts.

(a) The term “anchor tenancy” means an arrangement in which the United States Government agrees to procure sufficient quantities of a commercial space product or service needed to meet Government mission requirements so that a commercial venture is made viable.

(b) Subject to receiving an appropriation that:

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(1) Authorizes a multi-year anchor tenancy contract; and

(2) Specifies the commercial space product or service to be developed or used, NASA may enter into a multi-year anchor tenancy contract only if Administrator determines—

(i) The good or service meets the mission requirements of the National Aeronautics and Space Administration;

(ii) The commercially procured good or service is cost effective;

(iii) The good or service is procured through a competitive process;

(iv) Existing or potential customers for the good or service other than the United States Government have been specifically identified;

(v) The long-term viability of the venture is not dependent upon a continued Government market or other nonreimbursable Government support; and

(vi) Private capital is at risk in the venture.

(c) Contracts entered into under such authority may provide for the payment of termination liability in the event that the Government terminates such contracts for its convenience.

(1) Contracts that provide for this payment of termination liability shall include a fixed schedule of such termination liability payments. Liability under such contracts shall not exceed the total payments which the Government would have made after the date of termination to purchase the good or service if the contract were not terminated.

(2) Subject to appropriations, funds available for such termination liability payments may be used for purchase of the good or service upon successful delivery of the good or service pursuant to the contract. In such case, sufficient funds shall remain available to cover any remaining termination liability.

(d) *Limitations.* (1) Contracts entered into under such authority shall not exceed 10 years in duration.

(2) Such contracts shall provide for delivery of the good or service on a firm, fixed price basis.

(3) To the extent practicable, reasonable performance specifications shall be used to define technical requirements in such contracts.

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(4) In any such contract, the Administrator shall reserve the right to completely or partially terminate the contract without payment of such termi-

nation liability because of the contractor's actual or anticipated failure to perform its contractual obligations.

[77 FR 65497, Oct. 29, 2012, as amended at 80 FR 36721, June 26, 2015]

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.  
1813.003 Policy.

#### Subpart 1813.3—Simplified Acquisition Methods

1813.302–570 NASA solicitation provisions.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### 1813.003 Policy. (NASA supplements paragraph (g))

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

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

#### Subpart 1813.3—Simplified Acquisition Methods

#### 1813.302–570 NASA solicitation provisions.

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

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

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

(ii) Use the provision with its Alternate II in solicitations for the acquisition

of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3).

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

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

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

### PART 1814—SEALED BIDDING

#### Subpart 1814.2—Solicitation of Bids

Sec.  
1814.201–6 Solicitation provisions.  
1814.201–670 NASA solicitation provisions.

#### Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1814.2—Solicitation of Bids

#### 1814.201–6 Solicitation provisions.

#### 1814.201–670 NASA solicitation provisions.

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

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bids, except for construction, when



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it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of certain items. Insert the item numbers and/or descriptions applicable for the particular procurement.

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

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

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

### Subpart 1814.3—Submission of Bids

#### 1814.302 Bid submission. (NASA supplements paragraph (b))

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

## PART 1815—CONTRACTING BY NEGOTIATION

### Subpart 1815.2—Solicitation and Receipt of Proposals and Information

Sec.

1815.203-72 Risk Management.

1815.207 Handling proposals and information.

1815.207-70 Release of proposal information.

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

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

1815.209 Solicitation provisions and contract clauses.

1815.209-70 NASA solicitation provisions.

#### Subpart 1815.3—Source Selection

1815.305-70 Identification of unacceptable proposals.

1815.306 Exchanges with offerors after receipt of proposals.

#### Subpart 1815.4—Contract Pricing

1815.403 Obtaining certified cost or pricing data.

1815.403-170 Waivers of certified cost or pricing data.

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

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

1815.407 Special cost or pricing areas.

1815.407-2 Make-or-buy programs.

1815.408 Solicitation provisions and contract clauses.

1815.408-70 NASA solicitation provisions and contract clauses.

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

1815.504 Award to successful offeror.

#### Subpart 1815.6—Unsolicited Proposals

1815.602 Policy.

1815.604 Agency points of contact.

1815.606 Agency procedures.

1815.606-70 Relationship of unsolicited proposals to NRAs.

1815.609 Limited use of data.

1815.609-70 Limited use of proposals.

1815.670 Foreign proposals.

#### Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

1815.7003 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

### Subpart 1815.2—Solicitation and Receipt of Proposals and Information

#### 1815.203-72 Risk management.

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

[65 FR 70316, Nov. 22, 2000, as amended at 83 FR 28386, June 19, 2018]

#### 1815.207 Handling proposals and information.

#### 1815.207-70 Release of proposal information.

(a) NASA personnel participating in any way in the evaluation may not reveal any information concerning the

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

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

(2) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for the overall conduct of the evaluation. If outside evaluators are involved, the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

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

(ii) Unsolicited proposals; and

(iii) SBIR and STTR proposals.

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

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

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

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

(b) Appointment as a special Government employee is a separate action from the approval required by para-

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graph 1815.207-70(b) and may be processed concurrently. Appointment as a special Government employee shall be made by:

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

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

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

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

(2) Unsolicited proposals; and

(3) SBIR and STTR proposals.

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

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

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

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

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

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

**1815.209-70 NASA solicitation provisions.**

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

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

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

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

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

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

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

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

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

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

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

[63 FR 9954, Feb. 27, 1998, as amended at 63 FR 44408, Aug. 19, 1998; 83 FR 28386, June 19, 2018]

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

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

(e)(1) In no case shall the contacting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other offerors an opportunity to propose against the relaxed requirements.

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

**Subpart 1815.4—Contract Pricing****1815.403 Obtaining certified cost or pricing data.****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) 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.

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(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.

[80 FR 12936, Mar. 12, 2015]

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

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

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

[65 FR 12485, Mar. 9, 2000]

### **1815.407 Special cost or pricing areas.**

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

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

### **1815.408 Solicitation provisions and contract clauses.**

#### **1815.408-70 NASA solicitation provisions and contract clauses.**

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

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

(c) When the solicitation requires the submission of certified cost or pricing data, the contracting officer shall include 1852.215-85, Proposal Adequacy Checklist, in the solicitation to facili-

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tate submission of a thorough, accurate, and complete proposal.

[63 FR 9954, Feb. 27, 1998, as amended at 79 FR 10687, Feb. 26, 2014; 81 FR 24501, Apr. 26, 2016]

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

#### **1815.504 Award to successful offeror.**

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

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

### **Subpart 1815.6—Unsolicited Proposals**

#### **1815.602 Policy.**

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

[81 FR 41238, June 24, 2016]

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

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

general dissemination of unsolicited proposal information.

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

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

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

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

**1815.606-70 Relationship of unsolicited proposals to NRAs.**

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

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

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

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

**1815.609 Limited use of data.**

**1815.609-70 Limited use of proposals.**

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

**1815.670 Foreign proposals.**

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

[64 FR 36606, July 7, 1999]

**Subpart 1815.70—Ombudsman**

**1815.7001 NASA Ombudsman Program.**

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

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

**1815.7003 Contract clause.**

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

[65 FR 38777, June 22, 2000]

**PART 1816—TYPES OF CONTRACTS**

1816.001 Definitions.

**Subpart 1816.2—Fixed-Price Contracts**

Sec.

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

**Subpart 1816.3—Cost-Reimbursement Contracts**

1816.303-70 Cost-sharing contracts.

1816.307 Contract clauses.

1816.307-70 NASA contract clauses.

**Subpart 1816.4—Incentive Contracts**

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

1816.402-2 Performance incentives.

1816.402-270 NASA technical performance incentives.

1816.404 Fixed-price contracts with award fees.

1816.405 Cost-reimbursement incentive contracts.

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

1816.405-270 CPAF contracts.

1816.405-271 Base fee.

1816.405-272 Award fee evaluation periods.

1816.405-273 Award fee evaluations.

1816.405-274 Award fee evaluation factors.

1816.405-275 Award fee evaluation rating.

1816.405-276 Award fee payments and limitations.

1816.405-277 Award term.

1816.406 Contract clauses.

1816.406-70 NASA contract clauses.

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### Subpart 1816.5—Indefinite-Delivery Contracts

1816.506–70 NASA contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### 1816.001 Definitions.

As used in this part—

*Earned award fee* means the payment of the full amount of an award fee evaluation period's score/rating.

*Term-determining official* means the designated Agency official who reviews the recommendations of the Award-Term Board in determining whether the contractor is eligible for an award term.

*Unearned award fee* means the difference between the available award fee pool amount for a given award fee evaluation period less the contractor's earned award fee amount for that same evaluation period.

[81 FR 50366, Aug. 1, 2016, as amended at 82 FR 34418, July 25, 2017]

### Subpart 1816.2—Fixed-Price Contracts

#### 1816.202 Firm-fixed-price contracts.

##### 1816.202–70 NASA contract clause.

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

### Subpart 1816.3—Cost-Reimbursement Contracts

#### 1816.303–70 Cost-sharing contracts.

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

sults of the research, and the contractor has no means of recovering its shared costs on such projects.

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

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

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

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

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

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

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

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

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

52.215–2, Audit and Records—Negotiation.

[62 FR 3478, Jan. 23, 1997, as amended at 69 FR 21764, Apr. 22, 2004; 81 FR 50366, Aug. 1, 2016]

**1816.307–70 NASA contract clauses.**

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

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

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

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

(e) [Reserved]

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

(g) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), use the clause at 1852.216–90, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216–7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that—

(i) Include the clause at FAR 52.216–7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at 1852.203–71, Requirement to Inform Employees of Whistleblower Rights, dated June 2013 or later.

[62 FR 3478, Jan. 23, 1997, as amended at 79 FR 43961, July 29, 2014; 80 FR 12937, Mar. 12, 2015; 81 FR 50366, Aug. 1, 2016; 81 FR 63145, Sept. 14, 2016]

**Subpart 1816.4—Incentive Contracts**

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

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

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

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

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

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

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

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

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

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

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

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

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

**1816.402–2 Performance incentives.**

**1816.402–270 NASA technical performance incentives.**

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts 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.

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

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

(2) For an award fee contract.

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

(ii) The maximum negative performance incentive for research and development hardware (*e.g.*, the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative



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

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

[62 FR 3478, Jan. 23, 1997, as amended at 62 FR 58687, Oct. 30, 1997; 63 FR 9965, Feb. 27, 1998; 63 FR 12997, Mar. 17, 1998; 63 FR 28285, May 22, 1998; 68 FR 23424, May 2, 2003; 69 FR 21764, Apr. 22, 2004; 80 FR 12937, Mar. 12, 2015]

**1816.404 Fixed-price contracts with award fees.**

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

[62 FR 58687, Oct. 30, 1997]

**1816.405 Cost-reimbursement incentive contracts.**

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

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

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

**1816.405–270 CPAF contracts.**

(a) In addition to the items identified in FAR 16.401(e)(1), D&Fs will include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than \$2 million per year. Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

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

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

[76 FR 6697, Feb. 8, 2011, as amended at 80 FR 12937, Mar. 12, 2015]

**1816.405–271 Base fee.**

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

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

[76 FR 6697, Feb. 8, 2011]

**1816.405–272 Award fee evaluation periods.**

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated

with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

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

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997, as amended at 63 FR 13133, Mar. 18, 1998; 80 FR 12937, Mar. 12, 2015]

#### **1816.405-273 Award fee evaluations.**

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

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor’s total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government’s assessment of the quality of its performance, and establish the basis

for making interim award fee payments (see 1816.405-276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. However, if the final award fee adjectival rating is higher or lower than the average adjectival rating of all the interim award fee periods, or if the final award fee score is eight base percentage points higher or lower than the average award fee score of all interim award fee periods (e.g. 80% to 88%), then the Head of the Contracting Activity (HCA) or the Deputy Chief Acquisition Officer (if the HCA is the Fee Determination Official) shall review and concur in the final award fee determination. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as “Source Selection Information—see FAR 3.104”. See FAR 42.1503(h) regarding the requirements for releasing Source Selection Information included in the Contractor Performance Assessment Reporting System (CPARS).

[63 FR 13133, Mar. 18, 1998, as amended at 80 FR 12937, Mar. 12, 2015; 81 FR 50366, Aug. 1, 2016]

#### **1816.405-274 Award fee evaluation factors.**

(a) Explicit evaluation factors shall be established for each award fee period. Factors shall be linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Cost control, schedule, and technical performance considerations shall be included as

evaluation factors in all CPAF contracts, as applicable. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

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

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

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

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or

"repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

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

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

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

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

(1) Normally, the contractor should be given an unsatisfactory rating for cost control when there is a significant overrun within its control. However, the contractor may receive a satisfactory or higher rating for cost control if the overrun is insignificant. Award fee ratings should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and

assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum award fee rating allocated for cost control, provided the adjectival rating for all other award fee evaluation factors is very good or higher (*see* FAR 16.401(e)(iv)).

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

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

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, 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.

(h) When contract changes are anticipated, the contractor's responsiveness

to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

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

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

[76 FR 6697, Feb. 8, 2011, as amended at ; 80 FR 12937, Mar. 12, 2015]

#### **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.

(b) The following numerical scoring system shall be used in conjunction with the FAR adjectival rating categories and associated descriptions (*see* FAR 16401(e)(3)(iv)).

(1) *Excellent* (100-91)

(2) *Very good* (90-76)

(3) *Good* (75-51)

(4) *Satisfactory* (50)

(5) *Unsatisfactory* (less than 50) No award fee shall be paid for an unsatisfactory rating.

(c) As a benchmark for evaluation, in order to be rated "Excellent" overall, the contractor would typically be under cost, on or ahead of schedule, and providing outstanding technical performance.

(d) A weighted scoring system appropriate for the circumstances of the individual contract requirement should be developed. In this system, each evaluation factor (*e.g.*, technical, schedule,

cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0-100 according to the ratings defined in 1816.405-275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80 × 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

[76 FR 6698, Feb. 8, 2011, as amended at 80 FR 12937, Mar. 12, 2015]

**1816.405-276 Award fee payments and limitations.**

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

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

(c) *Fee payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final,

due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

[63 FR 13134, Mar. 18, 1998, as amended at 81 FR 50366, Aug. 1, 2016]

**1816.405-277 Award term.**

(a) An award term enables a contractor to become eligible for additional periods of performance or ordering periods under a service contract (as defined in FAR 37.101) by achieving and sustaining the prescribed performance levels under the contract. It incentivizes the contractor for maintaining superior performance by providing an opportunity for extensions of the contract term.

(b) Award terms are best suited for acquisitions where a longer term relationship (generally more than five years) between the Government and a contractor would provide significant benefits to both. Motivating excellent performance, fostering contractor capital investment, and increasing the desirability of the award, thus potentially increasing competition, are benefits that may justify the use of award terms.

(c) While the administrative burden and cost of more frequent procurements to both the Government and potential offerors should be considered when determining whether to use award terms, this decision must be weighed against market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes and associated frequent procurements.

(d) Award terms may be used in conjunction with contract options under FAR 17.2. Award terms are similar to contract options in that they are conditioned on the Government's continuing need for the contract and the availability of funds. However, FAR 17.207(c)(7) states the contracting officer must determine that the contractor's performance has been acceptable, *e.g.*, received satisfactory ratings. In contrast, to become eligible for an award term, the contractor must maintain a level of performance above acceptable as specified in the Award Term Plan (see 1816.405-277(i)). In contracts with both option periods and award terms, the award term period of

performance or ordering period shall begin after completion of any option period of performance or ordering period.

(e) Contracts with award terms shall include a base period of performance or ordering period and may include a designated number of option periods during which the Government will observe and evaluate the contractor's performance allowing the contractor to earn an award term. Additionally, as specified in the Award Term Plan, the contractor may also be evaluated for additional award terms during performance of an earned award term. If the contractor meets or exceeds the performance requirements, there is an on-going need for and desire to continue the contract, funds are available, and the contractor is not listed in the System for Award Management Exclusions, then the contractor may be eligible for contract extension for the period of the award term.

(f) Contracts with award terms shall comply with FAR and NFS restrictions on the overall contract length, such as the 5-year period of performance limitation found at NFS 1817.204.

(g) Award terms may only be used in acquisitions for services exceeding \$20 million dollars. Use of award terms for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(h) Consistent with the Competition in Contracting Act and general procurement principles, the potential award term periods in a procurement must be priced, evaluated, and considered in the initial contract selection process in order to be valid.

(i) All contracts including award terms shall be supported by an Award Term Plan that establishes criteria for earning an award term and the methodology and schedule for evaluating contractor performance. A copy of the Award Term Plan shall be included in the contract. The contracting officer may unilaterally revise the Award Term Plan. Award Term Plans shall—

(1) Identify the officials to include Term-Determining Official involved in

the award term evaluation and their function;

(2) Identify and describe each evaluation factor, any subfactors, related performance standards, adjectival ratings, and numerical ranges or weights to be used. The contracting officer should follow the guidance at 1816.405-274 in establishing award term evaluation factors and 1816.405-275 in establishing adjectival rating categories, associated descriptions, numerical scoring system, and weighted scoring system;

(3) Specify the annual overall rating required for the contractor to be eligible for an award term that reflects a level of performance above acceptable and the number of award terms the contractor may qualify for based on the rating score;

(4) Identify the evaluation period(s) and the evaluation schedule to be conducted at stated intervals during the contract period of performance or ordering period so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (*e.g.*, six months, nine months, twelve months, or at other specific milestones), and when the decision points are for the determination that the contractor is eligible for an award term; and

(5) Identify the contract's base period of performance or ordering period, any option period(s), and total award-term periods(s). Award term periods shall not exceed one year.

(j)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plans if—

(i) The contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the contractor fails to earn an award term in any succeeding year of contract performance, the contracting officer may cancel any award terms that the contractor has earned, but that have not begun;

(iii) The contracting officer notifies the contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The contractor represented that it was a small business concern prior to award of the contract, the contract was set-aside for small businesses, and the contractor rerepresents in accordance with FAR clause 52.219-28 Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The contracting officer notifies the contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term periods are also cancelled.

(k) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraph (j) of this section shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite the clause as the authority.

[82 FR 34418, July 25, 2017]

#### **1816.406 Contract clauses.**

##### **1816.406-70 NASA contract clauses.**

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

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

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

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

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

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

(g) Insert the clause at 1852.216-72, Award Term in solicitations and contracts for services exceeding \$20 million when award terms are contemplated.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997; 62 FR 58687, Oct. 30, 1997; 63 FR 13134, Mar. 18, 1998; 80 FR 12937, Mar. 12, 2015; 81 FR 71638, Oct. 18, 2016; 82 FR 34419, July 25, 2017]

### **Subpart 1816.5—Indefinite-Delivery Contracts**

#### **1816.506-70 NASA contract clause.**

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. The contracting officer shall use the clause with its—

(a) Alternate I, if the cost type, fixed price with prospective price redetermination, or fixed-price incentive contract does not include a NASA Form 533M reporting requirements; or

(b) Alternate II, if a fixed price contract is contemplated.

[83 FR 13115, Mar. 27, 2018]

## PART 1817—SPECIAL CONTRACTING METHODS

### Subpart 1817.2—Options

Sec.

1817.208 Solicitation provisions and contract clauses.

#### Subpart 1817.70—Phased Acquisition

1817.7000 Definitions.

1817.7002 Contract clauses.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

### Subpart 1817.2—Options

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

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

### Subpart 1817.70—Phased Acquisition

#### 1817.7000 Definitions.

(a) *Down-selection.* In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition.* An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase.

The phases may be acquired separately, in combination, or through a down-selection strategy.

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

[61 FR 55753, Oct. 29, 1996. Redesignated at 80 FR 68778, Nov. 6, 2015]

#### 1817.7002 Contract clauses.

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

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

[63 FR 56091, Oct. 21, 1998, as amended at 69 FR 21764, Apr. 22, 2004. Redesignated at 80 FR 68778, Nov. 6, 2015]



## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 1819—SMALL BUSINESS PROGRAMS

Sec.

1819.001 Definitions.

#### Subpart 1819.2—Policies

1819.201 General policy.

#### Subpart 1819.3—Determination of Small Business Status for Small Business Programs

1819.302 Protesting a small business representation or rerepresentation.

#### Subpart 1819.7—The Small Business Subcontracting Program

1819.708 Contract clauses.

1819.708–70 NASA solicitation provision and contract clause.

1819.811–3 Contract clauses.

#### Subpart 1819.10 [Reserved]

#### Subpart 1819.70—1819.71 [Reserved]

#### Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.

1819.7202 Eligibility.

1819.7203 Mentor-protégé advance payments.

1819.7204 Agreement submission and approval process.

1819.7205 Award Fee Pilot Program.

1819.7206—1819.7211 [Reserved]

1819.7212 Reporting requirements.

1819.7213—1819.7214 [Reserved]

1819.7215 Solicitation provision and contract clauses.

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

1819.7301 Scope of subpart.

1819.7302 NASA contract clauses.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### 1819.001 Definitions.

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

skilled and trained technicians or specialists.

#### Subpart 1819.2—Policies

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

(a)(i) NASA is committed to providing to small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is emphasized in high-technology areas where they have had low involvement level.

(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.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999; 65 FR 38777, June 22, 2000; 65 FR 58932, Oct. 3, 2000; 67 FR 53947, Oct. 23, 2001; 69 FR 21765, Apr. 22, 2004; 80 FR 12938, Mar. 12, 2015]

#### 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.

[80 FR 12938, Mar. 12, 2015]

**1819.708**

**Subpart 1819.7—The Small Business Subcontracting Program**

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

(b)(1) The contracting officer shall use the clause at FAR 52.219-9 with its Alternate II when contracting by negotiation.

**1819.708-70 NASA solicitation provision and contract clause.**

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

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

[64 FR 25215, May 11, 1999, as amended at 80 FR 12938, Mar. 12, 2015; 81 FR 10520, Mar. 1, 2016]

**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)).

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

[80 FR 12938, Mar. 12, 2015]

**Subpart 1819.10 [Reserved]**

**Subparts 1819.70—1819.71 [Reserved]**

**Subpart 1819.72—NASA Mentor-Protégé Program**

SOURCE: 74 FR 25672, May 29, 2009, unless otherwise noted.

**1819.7201 Scope of subpart.**

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) established under the authority of Title 42, U.S.C., 2473(c)(1). The purpose of the Program is to:

(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.

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives. Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219-9, Small Business Subcontracting Plan.

[74 FR 25672, May 29, 2009, as amended at 80 FR 12938, Mar. 12, 2015]

**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.

[80 FR 12938, Mar. 12, 2015]

**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.

[80 FR 12938, Mar. 12, 2015]

**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.

[80 FR 12938, Mar. 12, 2015]

**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.

[80 FR 12938, Mar. 12, 2015]

#### **1819.7206–1819.7211 [Reserved]**

#### **1819.7212 Reporting requirements.**

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each six-month period of performance commencing with the start of the agreement.

(c) Each semiannual report must include the following data on performance under the mentor-protégé agreement:

- (1) Expenditures by the mentor.
- (2) The number and dollar value of subcontracts awarded to the protégé.
- (3) Description of developmental assistance provided, including milestones achieved.
- (4) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) Semiannually, the protégé must provide an independently developed progress report using the semiannual

report template, on the progress made during the prior six months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The Protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

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

(f) Reports for all agreements must be submitted to the NASA OSBP Mentor-Protégé Program Manager, the mentor's cognizant administrative contracting officer, and their cognizant center small business specialist.

(g) Templates for the semiannual report and the Post-Agreement report and guidance for their submission are available at: <http://www.osbp.nasa.gov>.

[74 FR 25672, May 29, 2009, as amended at 80 FR 12939, Mar. 12, 2015]

#### **1819.7213–1819.7214 [Reserved]**

#### **1819.7215 Solicitation provision and contract clauses.**

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

(1) Any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

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

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

#### **1819.7301 Scope of subpart.**

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of the Small Business Act codified at 15 U.S.C. 631, as amended,

and the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), codified with amendments at 15 U.S.C. 638, as amended. The Small Business Act requires that the Small Business Administration (SBA) issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51-percent owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by the SBA Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

[71 FR 61688, Oct. 19, 2006, as amended at 80 FR 12939, Mar. 12, 2015]

**1819.7302 NASA contract clauses.**

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

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

Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert the clause at 1852.219-82, Limitation on Subcontracting—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982). 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) Contracting officers shall insert the clause at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982). 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) Contracting officers shall insert the clause at 1852.219-84, Limitation of the Principal Investigator—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982). 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

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(The Small Business Innovation Development Act of 1982.)

[71 FR 61688, Oct. 19, 2006, as amended at 80 FR 12939, Mar. 12, 2015]

**PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

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

**Subpart 1822.1—Basic Labor Policies**

**1822.103–5 Contract clause.**

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

[69 FR 21765, Apr. 22, 2004]

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

**Subpart 1823.2—Energy and Water Efficiency and Renewable Energy**

Sec.  
1823.271 NASA Solicitation provision and contract clause.

**Subpart 1823.5—Drug-Free Workplace**

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

**Subpart 1823.70—Safety and health**

1823.7001 NASA solicitation provisions and contract clauses.

**Subpart 1823.71—Authorization for Radio Frequency Use**

1823.7101 Contract clause.

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AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1823.2—Energy and Water Efficiency and Renewable Energy**

**1823.271 NASA Solicitation provision and contract clause.**

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

[68 FR 43334, July 22, 2003]

**Subpart 1823.5—Drug-Free Workplace**

**1823.570 Drug- and alcohol-free workforce.**

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

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

**1823.570–1 Definitions.**

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

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*Mission Critical Space Systems* means the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.

*Mission Critical Positions/Duties* means positions or duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission.

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

[80 FR 60554, Oct. 7, 2015]

### **1823.570-2 Contract clause.**

The contracting officer shall insert the clause at 1852.223-74, Drug- and Alcohol-Free Workforce, in all solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items.

[80 FR 60554, Oct. 7, 2015]

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

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

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

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

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

## **Subpart 1823.70—Safety and Health**

### **1823.7001 NASA solicitation provisions and contract clauses.**

(a) Insert the clause at 1852.223-70, Safety and Health Measures and Mishap Reporting, in solicitations and contracts above the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

(b) The clause prescribed in paragraph (a) of this section may be excluded with the approval of the installation official(s) responsible for matters of safety and occupational health.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations above the simplified acquisition threshold when the work will be conducted completely or partly on a Federally-controlled facility and the safety and health plan will be evaluated in source selection as approved by the source selection authority. This provision may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall incorporate the plan as an attachment into any resulting contract. The contracting officer shall insert the provision, with its Alternate I, in Invitations for Bid.

(d)(1) The contracting officer shall insert FAR clause at 52.236-13 with its Alternate I in solicitations and contracts when the work will be conducted completely or partly on a Federally-controlled facility and a Safety and Health Plan will be reviewed after

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award as a contract deliverable. The contracting officer may modify the wording in paragraph (f) of Alternate I to specify:

- (i) When the proposed plan is due and
- (ii) Whether the contractor may commence work prior to approval of the plan; or
- (iii) To what extent the contractor may commence work before the plan is approved.

(2) The requiring activity, in consultation with the cognizant health and safety official(s), will identify the data deliverable requirements for the safety and health plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall incorporate the plan as an attachment into the contract.

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

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

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

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

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

(f) The contracting officer shall insert the clause at 1852.223-72, Safety and Health (Short Form) in solicitations and contracts above the simplified acquisition threshold when work will be conducted completely or partly on Federally-controlled facilities and that do not contain the clause

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at 1852.223-73 or the FAR clause at 52.236-13 with its Alternate I.

[65 FR 37059, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18052, Apr. 5, 2001; 66 FR 48361, Sept. 20, 2001; 67 FR 17016, Apr. 9, 2002; 71 FR 8989, Feb. 22, 2006; 80 FR 36721, June 26, 2015; 80 FR 73677, Nov. 25, 2015; 81 FR 71638, Oct. 18, 2016]

### Subpart 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.

[80 FR 12939, Mar. 12, 2015]

## PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 1824.1—Protection of Individual Privacy

Sec.  
1824.102 General.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1824.1—Protection of Individual Privacy

##### 1824.102 General.

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

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

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

(ii) Records that—

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



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

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

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

**PART 1825—FOREIGN ACQUISITION**

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AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**1825.003 Definitions.**

**1825.003-70 NASA definitions.**

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

**Subpart 1825.1—Buy American Act—Supplies**

**1825.103 Exceptions.**

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

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

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

**Subpart 1825.4—Trade Agreements**

**1825.400 Scope of subpart.**

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

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

**Subpart 1825.9—Customs and Duties**

**1825.901 Policy.**

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

**Subpart 1825.11—Solicitation Provisions and Contract Clauses**

**1825.1101 Acquisition of supplies.**

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

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

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

**1825.1103 Other provisions and clauses.**

**1825.1103–70 Export control.**

(a) *Background.* (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or “foreign person”, as defined in 22 CFR 120.16, and

there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a “foreign person”. (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii))

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

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

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

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

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1827.000 Scope of part.

#### Subpart 1827.3—Patent Rights Under Government Contracts

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1827.304-1 General.

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1827.305 Administration of the patent rights clauses.

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#### 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) and 48 CFR chapter 1.

SOURCE: 80 FR 12939, Mar. 12, 2015, unless otherwise noted.

#### 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 non-profit 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 proc-

ess, 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 or-

ganization. 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](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

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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.

(g) The contracting officer shall use the clause at 1852.227–86, Commercial Computer Software License, in lieu of FAR 52.227–19, Commercial Computer Software License, when it is considered appropriate for the acquisition of existing computer software.

(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.

(i) [Reserved]

(k)(i) The contracting officer shall add paragraph (e) as set forth in 1852.227–19(a) to the clause at FAR 52.227–19, Commercial Computer Software License, when it is contemplated that updates, correction notices, con-

sultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

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

(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.

[80 FR 12939, Mar. 12, 2015, as amended at 80 FR 61994, Oct. 15, 2015; 83 FR 29040, June 22, 2018]

## PART 1828—BONDS AND INSURANCE

### Subpart 1828.3—Insurance

Sec.

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

1828.311–1 Contract clause.

1828.311–2 Agency solicitation provisions and contract clauses.

1828.311–270 NASA solicitation provisions and contract clauses.

1828.370 Fixed-price contract clauses.

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

1828.372 Clause for minimum insurance coverage.

## National Aeronautics and Space Administration

1828.370

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 61 FR 55765, Oct. 29, 1996, unless otherwise noted.

### Subpart 1828.3—Insurance

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

##### 1828.311-1 Contract clause.

The contracting officer 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—

(a) Waived by the procurement officer; or

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

[65 FR 54440, Sept. 8, 2000, as amended at 80 FR 12944, Mar. 12, 2015]

##### 1828.311-2 Agency solicitation provisions and contract clauses.

##### 1828.311-270 NASA solicitation provisions and contract clauses.

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

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

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

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

[65 FR 54440, Sept. 8, 2000]

##### 1828.370 Fixed-price contract clauses.

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

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

(c) When the clause at 1852.228-70 is used, the term “Contractor’s premises” shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor’s premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a

permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

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

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

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

or space exploration activity is in support of the International Space Station, the contracting officer shall insert the clause prescribed by paragraph (c) of this section and designate its application to that particular launch.

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

(d) At the contracting officer's discretion, the clauses prescribed by paragraphs (b) and (c) of this section may be used in solicitations, contracts, new work modifications, or extensions to existing contracts under the simplified acquisition threshold involving science or space exploration activities unrelated to the International Space Station, or International Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the science or space exploration activities unrelated to the International Space Station, or International Space Station activities.

[77 FR 59341, Sept. 27, 2012]

**1828.372 Clause for minimum insurance coverage.**

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228–75, Minimum Insurance Coverage, in fixed-price solicitations and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

**PART 1830—COST ACCOUNTING  
STANDARDS ADMINISTRATION**

**Subpart 1830.70—Facilities Capital Em-  
ployed for Facilities in Use and For Fa-  
cilities Under Construction**

Sec.

1830.7001 Facilities capital employed for fa-  
cilities in use.

1830.7001-1—1830.7001-3 [Reserved]

1830.7001-4 Postaward FCCOM applications.

1830.7002 Facilities capital employed for fa-  
cilities under construction.

1830.7002-1 Definitions.

1830.7002-2 Cost of money calculations.

1830.7002-3 Representative investment cal-  
culations.

1830.7002-4 Determining imputed cost of  
money.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR  
chapter 1.

SOURCE: 61 FR 55767, Oct. 29, 1996, unless  
otherwise noted.

**Subpart 1830.70—Facilities Capital  
Employed for Facilities in Use  
and For Facilities Under Con-  
struction**

**1830.7001 Facilities capital employed  
for facilities in use.**

**1830.7001-1—1830.7001-3 [Reserved]**

**1830.7001-4 Postaward FCCOM appli-  
cations.**

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

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

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

(2) Separately compute contract  
FCCOM in a manner similar to yearly

final overhead rates. As in overhead  
rates, include in the final settlement  
an adjustment from interim to final  
contract FCCOM. Do not adjust the  
contract estimated or target cost.

**1830.7002 Facilities capital employed  
for facilities under construction.**

**1830.7002-1 Definitions.**

(a) *Cost of money rate* is either—

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

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

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

**1830.7002-2 Cost of money calcula-  
tions.**

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

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

**1830.7002-3 Representative invest-  
ment calculations.**

(a) The calculation of the representa-  
tive investment requires consideration  
of the rate or expenditure pattern of  
the costs to construct, fabricate, or de-  
velop a capital asset.

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

(1) Determine a representative in-  
vestment for the cost accounting pe-  
riod by calculating the average of the  
month-end balances for that cost ac-  
counting period; or

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

## 1830.7002-4

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

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

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

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

### **1830.7002-4 Determining imputed cost of money.**

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

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

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

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

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

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### **PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES**

#### **Subpart 1831.2—Contracts With Commercial Organizations**

Sec.

1831.205 Selected costs.

1831.205-70 Contract clause.

1831.205-671 Solicitation provision.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### **Subpart 1831.2—Contracts with Commercial Organizations**

##### **1831.205 Selected costs.**

##### **1831.205-70 Contract clause.**

The contracting officer must insert the clause at 1852.231-70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized.

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

EDITORIAL NOTE: At 85 FR 52927, Aug. 27, 2020, 1831.205-70 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

##### **1831.205-671 Solicitation provision.**

The contracting officer must insert a provision substantially the same as the provision at 1852.231-71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value expected to exceed the threshold for requiring certified cost and pricing data as set forth in FAR 15.403-4.

[62 FR 4467, Jan. 30, 1997, as amended at 65 FR 46628, July 31, 2000; 80 FR 12944, Mar. 12, 2015]

### **PART 1832—CONTRACT FINANCING**

#### **Subpart 1832.1—Non-Commercial Item Purchase Financing**

Sec.

1832.111 Contract clauses for non-commercial purchases.

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1832.412-70

1832.111-70 NASA contract clause.

### Subpart 1832.2—Commercial Item Purchase Financing

1832.202-1 Policy.

1832.206 Solicitation provisions and contract clauses.

### Subpart 1832.4—Advance Payments For Non-Commercial Items

1832.412 Contract clause.

1832.412-70 NASA Contract clauses.

### Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-1 Customary progress payment rates.

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

### Subpart 1832.7—Contract Funding

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

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

### Subpart 1832.9—Prompt Payment

1832.908 Contract clauses.

1832.908-70 Submission of vouchers/invoices.

### Subpart 1832.10—Performance-Based Payments

1832.1005 Contract clauses.

1832.1009 Title.

### Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

### Subpart 1832.1—Non-Commercial Item Purchase Financing

**1832.111 Contract clauses for non-commercial purchases.**

**1832.111-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.232-79, Payment for

On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

### Subpart 1832.2—Commercial Item Purchase Financing

**1832.202-1 Policy. (NASA supplements paragraph (b))**

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts.

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

**1832.206 Solicitation provisions and contract clauses. (NASA supplements paragraph (g))**

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232-30.

### Subpart 1832.4—Advance Payments for Non-Commercial Items

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

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

(f) See 1832.412(e).

[63 FR 14040, Mar. 24, 1998]

**1832.412-70 NASA Contract clauses.**

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

[63 FR 14040, Mar. 24, 1998]

**1832.501**

**Subpart 1832.5—Progress Payments Based on Costs**

**1832.501 General.**

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

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

**1832.502-4 Contract clauses.**

**1832.502-470 NASA contract clause.**

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

**Subpart 1832.7—Contract Funding**

**1832.705 Contract clauses.**

**1832.705-2 Clauses for limitation of cost or funds.**

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

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price, incrementally-funded contracts or task orders.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

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cient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

[61 FR 55768, Oct. 29, 1996, as amended at 80 FR 12944, Mar. 12, 2015]

**Subpart 1832.9—Prompt Payment**

SOURCE: 81 FR 63145, Sept. 14, 2016, unless otherwise noted.

**1832.908 Contract clauses.**

(c)(2) When the clause at FAR 52.232-25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert “17th” in lieu of “30th” in paragraphs (a)(1)(i)(A) and (B) and (a)(1)(ii).

[81 FR 63145, Sept. 14, 2016, as amended at 81 FR 71638, Oct. 18, 2016]

**1832.908-70 Submission of vouchers/invoices.**

Insert clause 1852.232-80, Submission of Vouchers/Invoices for Payment, in all solicitations and contracts.

[83 FR 13115, Mar. 27, 2018]

**Subpart 1832.10—Performance-Based Payments**

**1832.1005 Contract clauses. (NASA supplements paragraph (a))**

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232-32 in accordance with 1832.1009.

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

**1832.1009 Title.**

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA’s right to take title to other property acquired or produced by the contractor under a contract containing a title provision.



**Subpart 1832.11—Electronic Funds Transfer**

**1832.1110 Solicitation provision and contract clauses. (NASA supplements paragraphs (a), (b), and (c)).**

(a) [Reserved]

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232-34(c) with a description of the EFT mechanism that will be used for the contract.

[64 FR 18373, Apr. 14, 1999, as amended at 69 FR 35271, June 24, 2004; 80 FR 12944, Mar. 12, 2015]

**PART 1833—PROTESTS, DISPUTES, AND APPEALS**

**Subpart 1833.1—Protests**

Sec.

1833.103 Protests to the agency.  
1833.106-70 Solicitation provision.

**Subpart 1833.2—Disputes and Appeals**

1833.215 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 61 FR 55771, Oct. 29, 1996, unless otherwise noted.

**Subpart 1833.1—Protests**

**1833.103 Protests to the agency.**

(d)(4) The provision at 1852.233-70 provides for an alternative to a protest to the United States Government Accountability Office (GAO). This alternative gives bidders or offerors the ability to protest directly to the contracting officer (CO) or to request an independent review by the Assistant Administrator for Procurement (or designee). The Agency review shall be deemed to be at the CO level when the request is silent as to the level of review desired. The Agency review shall be deemed to be at the level of the As-

sistant Administrator for Procurement (or designee) when the request specifies a level above the CO, even if the request does not specifically request an independent review by the Assistant Administrator for Procurement. Such reviews are separate and distinct from the Ombudsman Program described at 1815.7001.

(e) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the GAO prior to receipt of an Agency protest decision.

(4) When a bidder or offeror submits an Agency protest to the CO or alternatively requests an independent review by the Assistant Administrator for Procurement, the decision of the CO or the Assistant Administrator for Procurement shall be final and is not subject to any appeal or reconsideration within NASA.

[80 FR 36721, June 26, 2015]

**1833.106-70 Solicitation provision.**

The contracting officer shall insert the provision at 1852.233-70 in all solicitations.

[62 FR 11108, Mar. 11, 1997, as amended at 80 FR 36722, June 26, 2015]

**Subpart 1833.2—Disputes and Appeals**

**1833.215 Contract clause.**

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I whenever continued performance is vital to national security, the public health and welfare, important Agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

[61 FR 55771, Oct. 29, 1996, as amended at 80 FR 36722, June 26, 2015]

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 1834—MAJOR SYSTEM ACQUISITION

#### Subpart 1834.2—Earned Value Management System

Sec.

1834.201 Policy.

1834.203 Solicitation provisions and contract clause.

1834.203–70 NASA solicitation provision and contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1834.2—Earned Value Management System

##### 1834.201 Policy.

(a) NASA requires use of an Earned Value Management System (EVMS) on contracts for development or production work, including development or production work for flight and ground support systems and components, prototypes, and institutional investments (facilities, IT infrastructure, etc.) as specified below:

(1) For cost or fixed-price incentive contracts and subcontracts valued at \$50 Million or more the contractor shall have an EVMS that has been determined by the cognizant Federal agency to be in compliance with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748).

(2) For cost or fixed-price incentive contracts and subcontracts valued at \$20 Million or more but less than \$50 Million, the contractor shall have an EVMS that complies with the guidelines in ANSI/EIA-748, as determined by the cognizant Contracting Officer.

(3) For cost or fixed-price incentive contracts and subcontracts valued at less than \$20 Million the application of Earned Value Management (EVM) is optional and is a risk-based decision at the discretion of the program/project manager.

(b) Requiring EVM for firm-fixed-price (FFP) contracts and subcontracts of any dollar value is discouraged; however, an Integrated Master Schedule (IMS) and adequate reporting shall be required to plan and track schedule performance for development or production contracts valued at \$20 Million or more. In addition, for FFP contracts that are part of a program/project of \$50 Million or more, the contracting officer shall collaborate with the government's program/project manager to ensure the appropriate data can be obtained or generated to fulfill program management needs and comply with NASA Procedural Requirements (NPR) 7120.5.

(c) An EVMS is not required on non-developmental contracts for engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services.

(d) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA) office and the applicable NASA Center EVM Focal Point (<http://evm.nasa.gov/council.html>) in determining the adequacy of proposed EVMS plans and procedures and system compliance.

(e) Notwithstanding the EVMS requirements above, if an offeror proposes to use a system that has not been determined to be in compliance with the ANSI/EIA Standard-748, Earned Value Management Systems, the offeror shall submit a comprehensive plan for compliance with these EVMS standards, as specified in 1852.234-1, Notice of Earned Value Management System. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that complies with these standards.

(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

## National Aeronautics and Space Administration

1835.016-71

Work Breakdown Structure (WBS) and the appropriate data requirements descriptions (DRDs) for implementation into the contract.

[76 FR 40280, July 8, 2011, as amended at 80 FR 12944, Mar. 12, 2015]

### 1834.203 Solicitation provisions and contract clause.

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

### 1834.203-70 NASA solicitation provision and contract clause.

Except for firm-fixed price contracts and the contracts identified in 1834.201(c), the contracting officer shall insert—

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

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

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

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

[71 FR 66120, Nov. 13, 2006, as amended at 76 FR 40281, July 8, 2011; 80 FR 12944, Mar. 12, 2015]

## PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

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

1835.016-71 NASA Research Announcements.

1835.070 NASA contract clauses and solicitation provision.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

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

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

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

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

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

### 1835.016-71 NASA Research Announcements.

(a) *Scope.* An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An

## 1835.070

NRA shall not be used when the requirement is sufficiently defined to specify an end product or service.

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

### **1835.070 NASA contract clauses and solicitation provision.**

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

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

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

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

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

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

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

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

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

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

## **PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

### **Subpart 1836.2—Special Aspects of Contracting for Construction**

Sec.

1836.203 Government estimate of construction costs.

1836.213-370 Additive and deductive items.

### **Subpart 1836.5—Contract Clauses**

1836.513 Accident prevention.

1836.570 NASA solicitation provisions and contract clause.

**Subpart 1836.6—Architect-Engineer Services**

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

**Subpart 1836.70—Partnering**

1836.7004 NASA solicitation provision and contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1836.2—Special Aspects of Contracting for Construction****1836.203 Government estimate of construction costs.(NASA supplements paragraph (c))**

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

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

**1836.213-370 Additive and deductive items.**

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

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

**Subpart 1836.5—Contract Clauses****1836.513 Accident prevention.**

For additional guidance on the use of FAR clause 52.236-13, Accident Prevention, and its Alternate I in NASA contracts, see 1823.7001(d).

[80 FR 36722, June 26, 2015]

**1836.570 NASA solicitation provisions and contract clause.**

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

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

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

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

**Subpart 1836.6—Architect-Engineer Services****1836.602 Selection of firms for architect-engineer contracts.****1836.602-1 Selection criteria. (NASA supplements paragraph (a))**

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

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

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

## 1836.7004

and firms that have not had prior NASA contracts.

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

### Subpart 1836.70—Partnering

#### 1836.7004 NASA solicitation provision and contract clause.

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

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

## PART 1837—SERVICE CONTRACTING

### Subpart 1837.1—Service Contracts—General

Sec.

1837.101 Definitions.

1837.104 Personal services contracts.

1837.110 Solicitation provisions and contract clauses.

1837.110-70 NASA solicitation provision and contract clauses.

1837.170 Pension portability.

### Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy.

1837.203-70 Providing contractors access to sensitive information.

1837.303-71 Release of contractors' sensitive information.

1837.203-72 NASA contract clauses.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

### Subpart 1837.1—Service Contracts—General

#### 1837.101 Definitions.

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

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

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

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

#### 1837.110 Solicitation provisions and contract clauses.

#### 1837.110-70 NASA solicitation provision and contract clauses.

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

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

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

#### 1837.170 Pension portability.

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

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

high percentage of the predecessor contractor's employees are expected to remain with the program; or

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

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

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

### **Subpart 1837.2—Advisory and Assistance Services**

SOURCE: 80 FR 43031, July 21, 2015, unless otherwise noted.

#### **1837.203 Policy.**

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

#### **1837.203-70 Providing contractors access to sensitive information.**

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

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

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

(3) As used in this subpart, "service provider" refers to the service contractor that receives sensitive information from NASA to provide services to the requiring organization.

(b)(1) To support management activities and administrative functions, NASA relies on numerous service providers. These contractors may require access to sensitive information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure.

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

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

(d) This comprehensive plan shall incorporate any previous studies performed, shall thoroughly analyze all organizational conflicts of interest that might arise because the service provider has access to other companies'

**1837.203-71**

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

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

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

**1837.203-71 Release of contractors' sensitive information.**

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

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spond to requests from service providers for access to information.

**1837.203-72 NASA contract clauses.**

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

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

**PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY**

**Subpart 1839.1—General**

Sec.

1839.107 Contract clause.

1839.107-70 NASA contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1839.1—General**

**1839.107 Contract clause.**

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

**1839.107-70 NASA contract clause.**

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

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

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

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

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



## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 1840 [RESERVED]

#### PART 1841—ACQUISITION OF UTILITY SERVICES

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

#### Subpart 1841.5 [Reserved]

#### PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

##### Subpart 1842.70—Additional NASA Contract Clauses

Sec.

1842.7001 Denied access to NASA facilities.

1842.7002 Travel outside of the United States.

1842.7003 Emergency medical services and evacuation.

#### Subpart 1842.71 [Reserved]

##### Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

1842.7202 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

##### Subpart 1842.70—Additional NASA Contract Clauses

###### 1842.7001 Denied access to NASA facilities.

The contracting officer shall insert the clause at 1852.242-72, Denied Access to NASA Facilities, in solicitations and contracts where contractor personnel will be working onsite at a NASA facility such as: NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers. For a list of NASA facilities see NPD 1000.3 “The

NASA Organization”. The contracting officer shall not insert the clause where contractor personnel will be working onsite at the Jet Propulsion Laboratory including the Deep Space Network Communication Facilities (Goldstone, CA; Canberra, Australia; and Madrid, Spain).

[80 FR 52644, Sept. 1, 2015]

###### 1842.7002 Travel outside of the United States.

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

[81 FR 24501, Apr. 26, 2016]

###### 1842.7003 Emergency medical services and evacuation.

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

[81 FR 24501, Apr. 26, 2016]

#### Subpart 1842.71 [Reserved]

##### Subpart 1842.72—NASA Contractor Financial Management Reporting

###### 1842.7201 General.

(a) [Reserved]

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

Contract value/scope	Period of performance	533M	533Q
\$500K to \$999K .....	1 year or more .....	Required .....	Optional.

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

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

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

**1842.7202 Contract clause.**

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

[62 FR 36721, July 9, 1997]

**PART 1843—CONTRACT MODIFICATIONS**

**Subpart 1843.2—Change Orders**

Sec.

1843.205 Contract clauses.

1843.205-70 NASA contract clauses.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1843.2—Change Orders**

**1843.205 Contract clauses.**

As authorized in the prefaces of clauses FAR 52.243-1, Changes—Fixed Price; FAR 52.243-2, Changes—Cost Reimbursement; and FAR 52.243-4, Changes; and in the prescription at 43.205(c) for FAR 52.243-3, Changes—Time-and-Material or Labor-Hours, the period within which a contractor must assert its right to an equitable adjustment may be varied not to exceed 60 calendar days.

[65 FR 58932, Oct. 3, 2000]

**1843.205-70 NASA contract clauses.**

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

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

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

[81 FR 75345, Oct. 31, 2016]

**PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES**

**Subpart 1844.2—Consent to Subcontracts**

Sec.

1844.204 Contract clauses.

1844.204-70 NASA contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1844.2—Consent to Subcontracts**

**1844.204 Contract clauses.**

**1844.204-70 NASA contract clause.**

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

**PART 1845—GOVERNMENT PROPERTY**

**Subpart 1845.1—General**

Sec.

1845.107 Contract clauses.

1845.107-70 NASA solicitation provisions and contract clauses.

**Subpart 1845.3—Authorizing the Use and Rental of Government Property**

1845.302 Use of Government property on contracts with foreign governments or international organizations.

**Subpart 1845.4 [Reserved]****Subpart 1845.5—Support Government Property Administration**

1845.501-70 General.  
 1845.503-70 Delegations of property administration and plant clearance.  
 1845.505-70 Responsibilities of the property administrator.  
 1845.506-70 Responsibilities of the plant clearance officer.

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

1845.604 Restrictions on purchase or retention of contractor inventory.  
 1845.606-70 Contractor's approved scrap procedure.  
 1845.607 Scrap.  
 1845.607-1 General.  
 1845.607-170 Contractor's approved scrap procedure.  
 1845.607-2 Recovering precious metals.  
 1845.610 Sale of surplus contractor inventory.  
 1845.610-4 Contractor inventory in foreign countries.

**Subpart 1845.71—Forms Preparation**

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

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

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

**Subpart 1845.1—General****1845.107 Contract clauses.****1845.107-70 NASA solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at 1852.245-70, Contractor Requests for Government-furnished Property, in cost reimbursement solicitations and contracts.

(2) Use the clause with its Alternate I when the center Supply and Equipment Management Officer (SEMO) consents to permit the contractor to screen Government inventory for available property in lieu of contractor acquisition of new items.

(b)(1) The contracting officer shall insert the clause at 1852.245-71, Installation—Accountable Government Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or leased by NASA.

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

(3) The contracting officer shall identify, in the contract, the nature, quantity, and acquisition cost of the property and make it available on a nocharge basis.

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

(5) For contractors with both onsite and offsite performance requirements, contracting officers shall list Government property provided for offsite use separately in the contract. This Government property is furnished under FAR 52.245-1, Government Property, and remains accountable to the contractor during its use on the contract. This Government property is not subject to the clause at 1852.245-71, Installation—Accountable Government Property. The contracting officer shall address any specific maintenance considerations (*e.g.*, requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(c) The contracting officer shall insert the clause at 1852.245-72, Liability

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

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts and in all contracts in which the contractor has custody of NASA-owned property with a value of \$10 million or more, unless all property to be provided is subject to the clause at 1852.245-71, Installation-Accountable Government Property. Insert the clause 1852.245-73 in other types of solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) The contracting officer shall insert the clause at 1852.245-74, Identification and Marking of Government Equipment, in solicitations and contracts that—

(1) Include the clause at FAR 52.245-1; or

(2) Require the delivery of supplies.

(f) The contracting officer shall insert the clause at 1852.245-75, Property Management Changes, in solicitations and contracts that provide for progress payments or include any of the property clauses prescribed in FAR Part 45.

(g) The contracting officer shall insert the clause at 1852.245-76, List of Government Property Furnished Pursuant to FAR 52.245-1, in solicitations and contracts when the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245-77, List of

Government Property Furnished Pursuant to FAR 52.245-2, in solicitations and contracts containing the clause at 52.245-2, Government Property Installation Operation Services. In addition, the contracting officer shall insert the following language in the blanks in paragraph (e) of the clause at 52.245-2:

“The Government property provided under this clause is identified in clause 1852.245-77 of this contract.”

(i) The contracting officer shall insert the clause at 1852.245-78, Physical Inventory of Capital Personal Property, in cost reimbursement and fixed-price solicitations and contracts that provide Government property.

(j) The contracting officer shall insert the clause at 1852.245-79, Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value, in solicitations and contracts when, after consultation with the center Historic Preservation Officer, it is determined that the items acquired for or produced by the contract are likely to have historic significance or increased value due to their use in support of NASA projects and programs.

(k)(1) The contracting officer shall insert the provision at 1852.245-80, Government Property Management Information, in solicitations when it is known, or there is a reasonable chance, that Government property will be provided to the contractor for contract performance.

(2) The contracting officer shall use the provision with Alternate 1 when there are sufficient time and resources to allow prospective contractors the opportunity to inspect the property.

(l) The contracting officer shall insert the provision at 1852.245-81, List of Available Government Property, in solicitations when Government property will be made available for contract performance.

(m) The contracting officer shall insert the clause at 1852.245-82, Occupancy Management Requirements, in solicitations and contracts that require performance on, or in, any NASA Center, Installation, facility or other NASA real property.

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(n) The contracting officer shall insert the clause at 1852.245-83 Real Property Management Requirements, in solicitations and contracts for acquisition, construction, modification (including when the modification is a consequence of another approved task, *e.g.*, installation of telephonic or local area network equipment), demolition, or management of real property.

[76 FR 2004, Jan. 12, 2011, as amended at 81 FR 71638, Oct. 18, 2016; 81 FR 91047, Dec. 16, 2016]

### Subpart 1845.3—Authorizing the Use and Rental of Government Property

SOURCE: 76 FR 2005, Jan. 12, 2011, unless otherwise noted.

#### 1845.302 Use of Government property on contracts with foreign governments or international organizations.

(a) NASA contracting officers will recover a fair share of the cost of Government property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

### Subpart 1845.4 [Reserved]

### Subpart 1845.5—Support Government Property Administration

SOURCE: 76 FR 2005, Jan. 12, 2011, unless otherwise noted.

#### 1845.501-70 General.

(b) When the Industrial Property Officer or Property Administrator determines that the contractor's proposed systems, standards and practices for the management of Government property are inadequate to manage Government property, the Contracting Officer should: (1) Require the contractor to provide a written revision that addresses the determination of the Industrial Property Officer or Property Administrator.

#### 1845.503-70 Delegations of property administration and plant clearance.

(e) Under the clause at 1852.245-71, Installation-Accountable Government

Property, property is managed by center logistics functions using NASA internal policy and procedural guidance, except—

(1) When contractors are provided or are allowed the use of property that is not governed by that procedural guidance, management of that property is governed by the applicable FAR clause.

(2) When the contractor is responsible for performance of any segment of a property system under a FAR property clause, then property administration and plant clearance are required.

#### 1845.505-70 Responsibilities of the property administrator.

(c) When the property administrator determines that all or a portion of a contractor's property management practices and processes do not afford sufficient protection against loss, damage or destruction of Government property:

(1) The property administrator shall increase surveillance to prevent, to the extent possible, any loss, damage, or destruction of Government property; and

(2) Advise the contracting officer of any known or reported incidence of loss, damage or destruction identified during any period in which the contracting officer has revoked the Government's acceptance of risk.

(d) The property administrator shall review records and the results of contractor actions to identify any and all incidence where the contractor fails to report property no longer required for performance for periods longer than called for in their standards and practices.

#### 1845.506-70 Responsibilities of the plant clearance officer.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

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- (e) Final plant clearance of contractor inventory;
- (f) Pre-inventory scrap determinations, as appropriate;
- (g) Evaluating the adequacy of the contractor's procedures for property disposal and providing feedback to the Property Administrator regarding the contractor's performance in property disposal activities;
- (h) Determining the method of disposal;
- (i) Surveillance of any contractor conducted sales;
- (j) Accounting for all contractor inventory reported by the contractor;
- (k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;
- (l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales; and
- (m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales.

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

**1845.604 Restrictions on purchase or retention of contractor inventory.**

- (1) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.
- (2)(i) The contractor's or subcontractor's authority to approve the sale, purchase, or retention of Government property on a contract which is excess to needs after Government reutilization screening at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain such property at less than cost with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—
  - (A) A sale by a subcontractor to the contractor, the next higher-tier subcontractor, or their affiliates; or
  - (B) A sale, purchase, or retention by a subcontractor affiliated with the con-

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- tractor or next higher-tier subcontractor.
- (ii) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

**1845.606–70 Contractor's approved scrap procedure.**

- (a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.
- (d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and NFS 1845.

[76 FR 2006, Jan. 12, 2011]

**1845.607 Scrap.**

**1845.607–1 General.**

**1845.607–170 Contractor's approved scrap procedure.**

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

(b)–(c) [Reserved]

- (d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR part 45 and 1845.

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

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

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

**1845.610 Sale of surplus contractor inventory.****1845.610-4 Contractor inventory in foreign countries.**

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

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

### **Subpart 1845.71—Forms Preparation**

**1845.7101 Instructions for preparing NASA Form 1018.**

NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain periodic data from those records to meet these requirements. Changes in Federal Accounting Standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NASA Form (NF) 1018. The specific Statements of Federal Financial Accounting Standards (SFFAS) to be used for property records are SFFAS No. 3 "Accounting for Inventory and Related Property", SFFAS No. 6 "Accounting for Property, Plant and Equipment", SFFAS No. 10 "Accounting for Internal Use Software", and SFFAS No. 11 "Amendments to PP&E: Definitions" issued by the Federal Accounting Standards Advisory Board. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart. NF 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy, completeness, and timeliness of the report are critical to many aspects of NASA's operations.

[68 FR 62024, Oct. 31, 2003]

**1845.7101-1 Property classification.**

(a) *General.* (1) Contractors shall report costs in the classifications on NF 1018, as described in this section. The

cost of heritage assets and obsolete property will be reported on the NF 1018 under the appropriate classification. Supplemental reporting may also be required.

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

(A) Historical or natural significance;

(B) Cultural, educational or artistic importance; or

(C) Significant architectural characteristics.

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

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

(b) *Land.* Includes costs of land and improvements to land. Contractors shall report land with a unit acquisition cost of \$500,000 or more.

(c) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Contractors shall report buildings with a unit acquisition cost of \$500,000 or more. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central

air conditioning systems, and built-in safes and vaults.

(d) *Other Structures and Facilities.* Includes costs of acquisitions and improvements of real property (i.e. structures and facilities other than buildings); for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences. Contractors shall report other structures and facilities with a unit acquisition cost of \$500,000 or more and a useful life of two years or more.

(e) *Leasehold improvements.* Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$500,000 or more and a useful life of two years or more.

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

(g) *Equipment.* Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, software, test equipment, including their accessory or auxiliary items). Software integrated into and necessary to operate another item of Government property is considered to be an auxiliary item (see FAR 45.501) and should be considered part of the item of which it is an integral part. Other software to which NASA has title shall be classified as an individual item of equipment for reporting purposes if it has a useful life of 2 years or more and acquisition cost of \$1,000,000 or more (also see 1845.7101-

3(g)). Enhancement costs for existing software should be added to the software acquisition cost if the enhancement results in significant additional capability beyond that for which the software was originally developed (i.e., a capability that was not included in the original software specifications, the total cost of the enhancement is \$1,000,000 or more, or the expected useful life of the enhanced software is 2 years or more). Software licenses are excluded. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$500,000 or more and a useful life of two years or more; and

(2) All other items.

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

(1) The amount for all items with a unit acquisition cost of \$500,000 or more and a useful life of two years or more; and

(2) All other items.

(i) *Special test equipment.* Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment (see FAR 45.101). Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$500,000 or more and a useful life of two years or more; and

(2) All other items.

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



Materials in inventory, regardless of unit acquisition cost.

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

(1) The amount for all items with a unit acquisition cost of \$500,000 or more and a useful life of two years or more; and

(2) All other items.

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

[65 FR 54814, Sept. 11, 2000, as amended at 65 FR 82297, Dec. 28, 2000; 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62024, Oct. 31, 2003; 80 FR 51958, Aug. 27, 2015]

#### **1845.7101-2 Transfers of property.**

A transfer is a change in accountability between and among prime contracts, NASA Centers, and other Government agencies (e.g., between contracts of the same NASA Center, contracts of different NASA Centers, a contract of one NASA Center to another, a NASA Center to a contract of another NASA Center, and a contract to another Government agency or its contract). To enable NASA to properly

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

(a) *Approval and notification*. The contractor must obtain approval of the contracting officer or designee for transfers of property off the prime contract before shipment. Each shipping document must be signed by the contracting officer or designee demonstrating such approval. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for equipment), unit acquisition costs (as defined in 1845.7101-3, Unit Acquisition Cost), original Government acquisition dates for items with a unit acquisition cost of \$500,000 or more and a useful life of two years or more, and any other appropriate identifying or descriptive data. Where the DD Form 250, Material Inspection and Receiving Report, is

used, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original Government acquisition date shall be shown in Block 23, by item. Other formats, such as the DD Form 1149, Requisition and Invoice/Shipping Document, should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR part 45 and this part 1845, or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the formally approved shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly submit copies of shipping and receiving documents to the Center Deputy Chief Financial Officer, Finance, responsible for their respective contracts when accountability for NASA property is transferred to, or received from, other contracts, contractors, NASA Centers, or Government agencies.

(b) *Reclassification.* If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, Government acquisition date, required signatures, *etc.*) they shall request the omitted data directly

from the shipping contractor or through the property administrator. The contracting officer shall assist the Government Property Administrator and the receiving contractor to obtain all required information for the receiving contractor to establish adequate property records.

[65 FR 54815, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62025, Oct. 31, 2003; 76 FR 2006, Jan. 12, 2011; 80 FR 51958, Aug. 27, 2015]

#### 1845.7101-3 Unit acquisition cost.

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

(1) Amounts paid to vendors or other contractors.

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

(3) Handling and storage charges.

(4) Labor and other direct or indirect production costs (for assets produced or constructed).

(5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys.

(6) Acquisition and preparation costs of buildings and other facilities.

(7) An appropriate share of the cost of the equipment and facilities used in construction work.

(8) Fixed equipment and related installation costs required for activities in a building or facility.

(9) Direct costs of inspection, supervision, and administration of construction contracts and construction work.

(10) Legal and recording fees and damage claims.

(11) Fair values of facilities and equipment donated to the Government.

(b) Acquisition cost shall include, where appropriate, for contractor acquired property, related fees, or a *pro rata* portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate are those in which the contractor designs, develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(c) Acquisition cost shall be developed using actual costs to the greatest extent possible, especially costs directly related to fabrication such as labor and materials. Where estimates are used, there must be a documented methodology based on a historical basis. All acquisition costs shall be properly documented, supported and retained. Supporting documentation shall be made available upon request.

(d) The use of weighted average methodologies is acceptable for valuation of Material.

(e) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(f) Only modifications that improve an item's capacity or extend its useful life two years or more and that cost \$500,000 or more shall be reported on the NF 1018 on the \$500,000 & Over line. The costs of any other modifications, excluding routine maintenance, will be reported on the Under \$500,000 line. If an item's original unit acquisition cost is less than \$500,000, but a single subsequent modification costs \$500,000 or more, that modification only will be reported as an item \$500,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under \$500,000 total. The quantity for the modified item will remain "1" and be reported with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under \$500,000, it shall be reported as under \$500,000.

(g) Software acquisition costs include software costs incurred up through acceptance testing and material internal costs incurred to implement the software and otherwise make the software ready for use. Costs incurred after acceptance testing are excluded. License, maintenance, training, and data conversion costs are also excluded. If the software is purchased as part of a package, the costs will need to be segregated in such manner as to ensure that the excluded costs (maintenance,

training, etc.) are not reported as part of the software's acquisition cost. Enhancement costs for existing software should be added to the acquisition cost if the enhancement results in significant additional capability beyond that for which the software was originally developed (i.e. a capability that was not included in the original software specifications), the total cost of the enhancement is \$1,000,000 or more, and the expected useful life of the enhanced software is 2 years or more. Include the same types of cost as indicated above under new software. Costs incurred solely to repair a design flaw or perform minor upgrades should not be included.

(h) The computation of work in process (WIP) shall include all direct and indirect costs of fabrication, including associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory. The computation of WIP shall incorporate the other requirements for unit acquisition cost as outlined in paragraphs (a) through (e) of this section. In addition, acquisition cost of property furnished by the Government, which has been incorporated in the property item under construction or in process of fabrication, should be included. Do not include costs for operation or repairing existing completed property items. Once the property is complete, include all the costs outlined above in its acquisition value in the property record. The WIP values are inception to date until such time as the WIP is completed. It does not include future costs.

[65 FR 54815, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68534, Nov. 12, 2002; 68 FR 62025, Oct. 31, 2003; 80 FR 51958, Aug. 27, 2015]

## 1845.7101-4

### 1845.7101-4 Types of deletions from contractor property records.

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Lost, damaged or destroyed.* Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(b) *Transferred in Place.* Deletion amounts that result from transfer of property to a follow-on prime contract or other prime contract with the same contractor.

(c) *Transferred to NASA Center accountability.* Deletion amounts that result from transfer of accountability to the NASA Center responsible for the contract, whether or not items are physically moved.

(d) *Transferred to another NASA Center.* Deletion amounts that result from transfer of accountability to a NASA Center other than the one responsible for the contract, whether or not items are physically moved.

(e) *Transferred to another Government agency.* Deletion amounts that result from transfer of property to another Government agency.

(f) *Purchased at cost/returned for credit.* Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605-1, or from contractor returns to suppliers under FAR 45.605-2.

(g) *Disposed of through plant clearance process.* Deletions other than transfers within the Federal Government, e.g., donations to eligible recipients, sold at less than cost, or abandoned/directed destruction, or trade-ins.

(h) *Other.* Types of deletion other than those reported in paragraph (a) through (g) of this section such as those resulting from reclassifications (e.g. from equipment to agency-peculiar property).

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001; 67 FR 68535, Nov. 12, 2002]

### 1845.7101-5 Contractor's privileged financial and business information.

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents

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sent to the shipping and receiving NASA Centers.

[65 FR 54816, Sept. 11, 2000, as amended at 66 FR 41806, Aug. 9, 2001]

## PART 1846—QUALITY ASSURANCE

### Subpart 1846.1—General

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1846.102 Policy.

### Subpart 1846.3—Contract Clauses

1846.370 NASA contract clauses.

### Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

### Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670-1 General.

1846.670-2 Applicability.

1846.670-3 Use.

1846.670-4 Multiple shipments.

1846.670-5 Forms.

1846.671 Contract quality assurance on shipments between contractors.

1846.672 Preparing DD Forms 250 and 250c.

1846.672-1 Preparation instructions.

1846.672-2 Consolidated shipments.

1846.672-3 Multiple consignee instructions.

1846.672-4 Correction instructions.

1846.672-5 Packing list instructions.

1846.672-6 Receiving instructions.

1846.673 Distribution of DD Forms 250 and 250c.

1846.674 Contract clause.

### Subpart 1846.70—Counterfeit Electronic Part Detection and Avoidance.

1846.7000 Scope of subpart.

1846.7001 Definitions.

1846.7002 Policy.

1846.7003 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 62 FR 14024, Mar. 25, 1997, unless otherwise noted.

### 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

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are not allowed under part 12 procedures. See FAR 12.208.

[80 FR 12944, Mar. 12, 2015]

### Subpart 1846.3—Contract Clauses

#### 1846.370 NASA contract clauses.

The contracting officer shall insert the clause at 1852.246-73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

[80 FR 60554, Oct. 7, 2015]

### Subpart 1846.4—Government Contract Quality Assurance

#### 1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

### Subpart 1846.6—Material Inspection and Receiving Reports

#### 1846.670 Introduction.

##### 1846.670-1 General.

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).

[80 FR 12944, Mar. 12, 2015]

##### 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.

[80 FR 12944, Mar. 12, 2015]

##### 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.

[80 FR 12945, Mar. 12, 2015]

#### 1846.670-4 Multiple shipments.

(a) If the “shipped to,” “marked for,” “shipped from,” “CQA,” and “acceptance” data are the same for more than one shipment made on the same day under the same contract in a single car, truck, or other vehicle, one MIRR shall be prepared to cover all such shipments.

(b) If the volume of the shipments precludes the use of a single car, truck, or other vehicle, a separate MIRR shall be provided for each vehicle.

[62 FR 14024, Mar. 25, 1997, as amended at 69 FR 44610, July 27, 2004]

#### 1846.670-5 Forms.

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>.

[80 FR 12945, Mar. 12, 2015]

#### 1846.671 Contract quality assurance on shipments between contractors.

(a) The supplier’s commercial shipping document/packing list shall indicate performance of required CQA actions at subcontract level.

The following entries shall be made on the document/packing list:

Required CQA of items has been performed.

(Signature of Authorized Government Representative)

(Date)

(Typed Name and Office)

(b) Distribution for Government purposes shall be one copy each—

- (1) With shipment;
- (2) For the Government representative at consignee (via mail); and
- (3) For the Government representative at consignor.

**1846.672 Preparing DD Forms 250 and 250c.**

**1846.672-1 Preparation instructions.**

(a) *General.* (1) Dates shall 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).

(2) Addresses shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) The data entered in the blocks at the top of DD Form 250C shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* 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.

(d) *Block 2—SHIPMENT NO.* (1) The shipment number is a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each “shipped from” address (Block 11). The prefix shall be different for each “Shipped From” address and shall remain constant throughout the contract period.

(ii) The serial number for the first shipment under a prime contract from each “shipped from” address shall be 0001; subsequent shipments under that prime contract shall be consecutively numbered. Alpha-numeric shall be

used when more than 9,999 numbers are required. Alpha-numeric shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999. When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a “replacement shipment” is involved (see paragraph (r)(4)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a “Z” in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor’s plant, the prime contractor may elect

(i) To direct the subcontractor to suffix the “Z” or

(ii), On receipt of the subcontractor final shipment information, to correct the DD Form 250 covering the last shipment from the prime contractor’s plant by adding a “Z” to that shipment number.

(e) *Block 3—DATE SHIPPED.* Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an “E” after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reinsurance of the MIRR is not required to show the actual shipping date.

(f) *Block 4—B/L TCN.* When applicable, enter the commercial or Government bill of lading number after “B/L”; and the Transportation Control Number after “TCN.”

(g) *Block 5—DISCOUNT TERMS.* (1) The Contractor may enter the discount in terms of percentages on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-5.

(h) *Block 6—INVOICE.* 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.

(i) *Block 7—PAGE/OF.* Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

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

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

(l) *Block 10—ADMINISTERED BY.* Enter the code and address of the contracting office cited in the contract.

(m) *Block 11—SHIPPED FROM/CODE/FOB.* (1) Enter the code and address of the "shipped from" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services that do not require delivery of items upon completion, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" an "S" for origin or "D" for destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12—PAYMENT WILL BE MADE BY.* Enter the address of the payment office cited in the contract.

(o) *Block 13—SHIPPED TO/CODE.* Enter the code and address from the contract or shipping instructions.

(p) *Block 14—MARKED FOR/CODE.* Enter the code and address from the contract or shipping instructions.

(q) *Block 15—ITEM NO.* Enter the item number used in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16—STOCK/PART NO./DESCRIPTION.* (1) Enter, as applicable, for each item, using single spacing between each line item, the following:

(i) The 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.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) For service items, enter the word "SERVICE" followed by a short description of less than 20 characters. Do not complete items 4, 13, and 14 when material is not shipped.

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

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

(4) Enter on the next line the following as appropriate (entries may be extended through Block 20). When entries apply to more than one item in the MIRR, enter them only once after the last item and reference the applicable item numbers.

(i) Enter in capital letters any special handling instructions/limits for material environmental control (*e.g.*, temperature, humidity, aging, freezing, and shock).

(ii) When an 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.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter "GFP".

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT" (see paragraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification \_\_\_\_\_, Quantity \_\_\_\_\_, Estimated Value \_\_\_\_\_, Authority \_\_\_\_\_."

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: "These components were listed as shortages on Shipment Number \_\_\_\_\_, date shipped \_\_\_\_\_."

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to \_\_\_\_\_, Quantity \_\_\_\_\_, Item \_\_\_\_\_, Ownership (Government/contractor)."

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer 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

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering "PAYMENT COPY" in approximately one-half-inch outline-type letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17—QUANTITY SHIP/REC'D.* (1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" top designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18 UNIT.* Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage.

(u) *Block 19—UNIT PRICE.* Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.



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(v) *Block 20—AMOUNT.* Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21—CONTRACT QUALITY ASSURANCE.* The words “conform to contract” contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) “A. *ORIGIN.*”

(i) The authorized Government representative shall—

(A) Place an “X” when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) “B. *DESTINATION.*”

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance of CQA and acceptance are at destination, the authorized Government representative shall—

(A) Place an “X” in the appropriate box(es);

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(x) *Block 22—RECEIVER’S USE.* This block shall be used by the receiving authority (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier’s arrival is the date received for purposes of this block.

(y) *Block 23—CONTRACTOR USE ONLY.* This block is provided and reserved for contractor use.

[62 FR 14024, Mar. 25, 1997, as amended at 80 FR 12945, Mar. 12, 2015]

**1846.672-2 Consolidated shipments.**

When individual shipments are held at the contractor’s plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

**1846.672-3 Multiple consignee instructions.**

The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter “See Attached Distribution List.”

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the “total” quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual “Shipped To” and “Marked For” with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

**1846.672-4 Correction instructions.**

When, because of errors of omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block.

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If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 and 17, enter the words “CORRECTIONS HAVE BEEN VERIFIED” on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) MIRRs shall not be corrected for Block 19 and 20 entries.

(d) Clearly mark pages of the MIRR requiring correction with the words “CORRECTED COPY”, avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, also mark page 1 “CORRECTED COPY”.

(e) Page 1 and only those continuation pages marked “CORRECTED COPY” shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

**1846.672-5 Packing list instructions.**

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked “PACKING LIST”.

[62 FR 14024, Mar. 25, 1997. Redesignated at 80 FR 12945, Mar. 12, 2015]

**1846.672-6 Receiving instructions.**

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If acceptance or CQA and acceptance of supplies are required upon arrival at destination, see Block 21B for instructions.

[62 FR 14024, Mar. 25, 1997. Redesignated at 80 FR 12945, Mar. 12, 2015]

**1846.673 Distribution of DD Forms 250 and 250c.**

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the

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contract or instructions of the contracting officer.

**1846.674 Contract clause.**

The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts 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).

[80 FR 12945, Mar. 12, 2015]

**Subpart 1846.70—Counterfeit Electronic Part Detection and Avoidance.**

SOURCE: 85 FR 52927, Aug. 28, 2020, unless otherwise noted.

**1846.7000 Scope of subpart.**

This subpart implements section 823(c), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10).

(a) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts; and

(b) Applies to electronic parts when their presence in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.

(c) Contracting officers, in consultation with the requiring activity, are responsible for making a determination concerning the applicability of this section and the appropriate use of the prescribed contract clauses.

**1846.7001 Definitions.**

“Authentic part” means a new and unmodified part produced by the original component manufacturer, or a

source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

“Authentication” means a process to verify that a part is not counterfeit or suspect counterfeit.

“Authorized aftermarket manufacturer” means an organization that fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified as trustworthy by a contractor or subcontractor as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

“Covered contractor” means a contractor that supplies an electronic part, or a product that contains an electronic part, to NASA.

“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial

number, lot number, date code, or performance characteristics.

“Electronic part” means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application.

“Original component manufacturer” means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company’s brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

#### **1846.7002 Policy.**

The government and its contractors and subcontractors at all tiers are required to obtain electronic parts as prescribed in this section, whether the electronic parts are procured as discrete items or contained in an assembly.

(a) The covered contractor and subcontractors at all tiers shall obtain electronic parts that are in production or currently available in stock from—

(1) The original manufacturers of the parts;

(2) Their authorized dealers; or

(3) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.

(b) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph

(a) of this section, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(1) The covered contractor assumes responsibility for the authenticity of parts; and

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(2) The covered contractor performs inspection, testing and authentication of parts; and

(3) The covered contractor obtains traceability information for the electronic parts (*e.g.*, data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(4) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) The covered contractor, including subcontractors, shall notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

**1846.7003 Contract clause.**

For acquisitions with covered contractors as defined in section 1846.7001, use the clause at 1852.246-74, Contractor Counterfeit Electronic Part Detection and Avoidance, in solicitations and contracts, when procuring—

(a) Electronic parts;

(b) End items, components, parts, or assemblies containing electronic parts; or

(c) Services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

**PART 1847—TRANSPORTATION**

**Subpart 1847.3—Transportation in Supply Contracts**

Sec.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-70 NASA contract clauses.

**Subpart 1847.70—Protection of the Florida Manatee**

1847.7001 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 62 FR 14028, Mar. 25, 1997, unless otherwise noted.

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**Subpart 1847.3—Transportation in Supply Contracts**

**1847.305 Solicitation provisions, contract clauses, and transportation factors.**

**1847.305-70 NASA contract clauses.**

(a) The contracting officer may insert a clause substantially as stated at 1852.247-72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b. point is destination and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert a clause substantially as stated at 1852.247-73, Bills of Lading, in f.o.b. origin solicitations and contracts.

[62 FR 14028, Mar. 25, 1997, as amended at 67 FR 38908, June 6, 2002]

**Subpart 1847.70—Protection of the Florida Manatee**

**1847.7001 Contract clause.**

The contracting officer shall insert the clause at 1852.247-71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees. The clause shall also be included in applicable subcontracts (including vendor deliveries).

**PART 1849—TERMINATION OF CONTRACTS**

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 62 FR 14030, Mar. 25, 1997, unless otherwise noted.

**PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT**

**Subpart 1850.1—Extraordinary Contractual Actions**

Sec.

1850.102 Delegation of and limitations of exercise of authority.

1850.102-2 Contract adjustment boards.

1850.103 Contract adjustments.

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## 1850.104-3

1850.103-5 Processing cases.  
1850.103-570 Submission of request to the Contract Adjustment Board.  
1850.103-6 Disposition.  
1850.103-670 Implementation of the Contract Adjustment Board's decision.  
1850.104 Residual powers.  
1850.104-2 General.  
1850.104-3 Special procedures for unusually hazardous or nuclear risks.  
1850.104-370 Subcontractor indemnification requests.  
1850.104-4 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 76 FR 72328, Nov. 23, 2011, unless otherwise noted.

### Subpart 1850.1—Extraordinary Contractual Actions

#### 1850.102 Delegation of and limitations of exercise of authority.

##### 1850.102-2 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

#### 1850.103 Contract adjustments.

##### 1850.103-5 Processing cases.

##### 1850.103-570 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for Contracts and Procurement Law, including in the forwarding letter—

- (1) The nature of the case;
  - (2) The recommended disposition;
- and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified in-

formation in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

[76 FR 72328, Nov. 23, 2011, as amended at 80 FR 36722, June 26, 2015]

##### 1850.103-6 Disposition.

##### 1850.103-670 Implementation of the Contract Adjustment Board's decision.

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for Contracts and Procurement Law.

[76 FR 72328, Nov. 23, 2011, as amended at 80 FR 36722, June 26, 2015]

##### 1850.104 Residual powers.

##### 1850.104-2 General.

(a) Requests for the exercise of residual powers shall be sent to the Headquarters Office of Procurement, Program Operations Division for review and processing. The NASA Administrator is the approval authority for the Memorandum of Decision.

[80 FR 36722, June 26, 2015]

##### 1850.104-3 Special procedures for unusually hazardous or nuclear risks.

(a) *Indemnification requests.* (1) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. The request shall be submitted six (6) months in advance of the desired effective date of the requested indemnification in order to allow sufficient time for the request to be reviewed, analyzed, and approved by the Agency. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associated divisions, subsidiaries, or central offices of the contractor.

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(ii) The contractor's request for indemnification must identify a sufficient factual basis for indemnification by explaining specifically what work activities under the contract create the unusually hazardous or nuclear risk and identifying the timeframes in which the risk would be incurred.

(iii) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

(b) *Action on indemnification requests.*

(1) If recommending approval, the contracting officer shall forward the required information to the NASA Headquarters Office of Procurement, Program Operations Division, along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s), including specificity about which activities present such risk and the anticipated timeframes in which the risk will be incurred;

(iv) A complete discussion of the contractor's financial protection program; and

(vi) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(2) The NASA Administrator is the approval authority for using the indemnification clause in a contract by a Memorandum of Decision.

(4)(ii) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.104-3(b) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and condi-

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tions of insurance in relation to the unusually hazardous risk.

[80 FR 36722, June 26, 2015]

### 1850.104-370 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.104-3. The prime contractor's request shall provide information responsive to 1850.104-3, FAR 50.104-3, and FAR 50.104-3(b)(1)(i), (ii), (iv), (v), and (vii). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

### 1850.104-4 Contract clause.

The contracting officer shall obtain the NASA Administrator's approval prior to including clause 52.250-1 in a contract.

[80 FR 36722, June 26, 2015]

## PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 62 FR 14032, Mar. 25, 1997, unless otherwise noted.

### Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

#### 1851.205 Contract clause.

When the clause at FAR 52.251-2 is included in a solicitation or contract, also include the clause set forth at 1852.223-76.

[68 FR 43334, July 22, 2003]

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1852.000 Scope of part.

#### Subpart 1852.2—Texts of Provisions and Clauses

- 1852.203-70 Display of Inspector General Hotline Posters.
- 1852.203-71 Requirement to inform employees of whistleblower rights.
- 1852.204-75 Security classification requirements.
- 1852.204-76 Security requirements for unclassified information technology resources.
- 1852.208-81 Restrictions on printing and duplicating.
- 1852.209-70 [Reserved]
- 1852.209-71 Limitation of future contracting.
- 1852.209-72 [Reserved]
- 1852.211-70 Packaging, handling, and transportation.
- 1852.213-70 Offeror Representations and Certifications—Other Than Commercial Items.
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- 1852.216-87 [Reserved]
- 1852.216-88 Performance incentive.
- 1852.216-89 Assignment and release forms.
- 1852.216-90 Allowability of legal costs incurred in connection with a whistleblower proceeding.
- 1852.217-70 [Reserved]
- 1852.217-71 Phased acquisition using down-selection procedures.
- 1852.217-72 Phased acquisition using progressive competition down-selection procedures.
- 1852.219-11 Special 8(a) contract conditions.
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- 1852.219-73 Small business subcontracting plan.
- 1852.219-74 Use of Rural Area Small Businesses.
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- 1852.219-77 NASA Mentor-Protégé program.
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- 1852.219-80 Limitation on subcontracting—SBIR Phase I Program.
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- 1852.219-83 Limitation of the principal investigator—SBIR program.
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- 1852.225-70 Export Licenses.
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- 1852.227-11 Patent Rights—ownership by the contractor (DATE).
- 1852.227-14 Rights in data—General.
- 1852.227-17 [Reserved]
- 1852.227-70 New technology—other than a small business firm or nonprofit organization.
- 1852.227-71 Requests for waiver of rights to inventions.
- 1852.227-72 Designation of new technology representative and patent representative.
- 1852.227-84 Patent rights clauses.

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1852.227-85 Invention reporting and rights—Foreign.

1852.227-86 Commercial computer software license.

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

1852.228-70 Aircraft ground and flight risk.

1852.228-71 Aircraft flight risks.

1852.228-75 Minimum insurance coverage.

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

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

1852.228-80 Insurance—Immunity From Tort Liability.

1852.228-81 Insurance—Partial Immunity From Tort Liability.

1852.228-82 Insurance—Total Immunity From Tort Liability.

1852.231-70 Precontract costs.

1852.231-71 Determination of compensation reasonableness.

1852.232-70 NASA Modification of FAR 52.232-12.

1852.232-77 Limitation of funds (Fixed-Price Contract).

1852.232-79 Payment for on-site preparatory costs.

1852.232-80 Submission of vouchers for payment.

1852.232-81 Contract funding.

1852.232-82 Submission of requests for progress payments.

1852.233-70 Protests to NASA.

1852.234-1 Notice of Earned Value Management System.

1852.234-2 Earned Value Management System.

1852.235-70 Center for AeroSpace Information.

1852.235-71 Key personnel and facilities.

1852.235-72 Instructions for responding to NASA Research Announcements.

1852.235-73 Final scientific and technical reports.

1852.235-74 Additional reports of work—research and development.

1852.236-71 Additive or deductive items.

1852.236-72 Bids with unit prices.

1852.236-73 Hurricane plan.

1852.236-74 Magnitude of requirement.

1852.236-75 Partnering for construction contracts.

1852.237-70 Emergency evacuation procedures.

1852.237-71 Pension portability.

1852.237-72 Access to sensitive information.

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1852.239-70 Alternate delivery points.

1852.241-70 [Reserved]

1852.242-71 Travel outside of the United States.

1852.242-72 Denied access to NASA facilities.

1852.242-73 NASA contractor financial management reporting.

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1852.242-78 Emergency medical services and evacuation.

1852.243-70—1852.243-71 [Reserved]

1852.243-72 Equitable adjustments.

1852.244-70 Geographic participation in the aerospace program.

1852.245-70 Contractor requests for Government-furnished equipment.

1852.245-71 Installation-accountable Government property.

1852.245-72 Liability for Government property furnished for repair or other services.

1852.245-73 Financial reporting of NASA property in the custody of contractors.

1852.245-74 Identification and marking of Government equipment.

1852.245-75 Property management changes.

1852.245-76 List of Government property furnished pursuant to FAR 52.245-1.

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1852.245-78 Physical inventory of capital personal property.

1852.245-79 Records and disposition reports for Government property with potential historic or significant real value.

1852.245-80 Government property management information.

1852.245-81 List of available Government property.

1852.245-82 Occupancy management requirements.

1852.245-83 Real property management requirements.

1852.246-70 [Reserved]

1852.246-71 Government contract quality assurance functions.

1852.246-72 Material Inspection and Receiving Report.

1852.246-73 Human space flight item.

1852.246-74 Contractor Counterfeit Electronic Part Detection and Avoidance.

1852.247-71 Protection of the Florida manatee.

1852.247-72 Advance notice of shipment.

1852.247-73 Bills of Lading.

**Subpart 1852.3—Provision and Clause Matrix**

1852.300 Scope of subpart.

1852.301 Solicitation provisions and contract clauses (Matrix).

AUTHORITY: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.

**1852.000 Scope of part.**

This part, in conjunction with FAR part 52—

(a) Sets forth the provisions and clauses prescribed in the NFS,



(b) Gives instructions for their use, and

(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

[61 FR 40547, Aug. 5, 1996]

### Subpart 1852.2—Texts of Provisions and Clauses

#### 1852.203-70 Display of Inspector General Hotline Posters.

As prescribed in 1803.7001, insert the following clause:

DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS (JUN 2001)

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546-0001, (202) 358-1220.

[66 FR 29727, June 1, 2001]

#### 1852.203-71 Requirement to inform employees of whistleblower rights.

As prescribed in 1803.970, use the following clause:

REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (AUG 2014)

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 1803.9 of the NASA FAR Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

[79 FR 43961, July 29, 2014, as amended at 79 FR 51501, Aug. 29, 2014; 80 FR 61994, Oct. 15, 2015]

#### 1852.204-75 Security classification requirements.

As prescribed in 1804.404-70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of \_\_\_\_\_ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment \_\_\_\_\_ [Insert the attachment number of the DD Form 254].

(End of clause)

[61 FR 40548, Aug. 5, 1996]

#### 1852.204-76 Security requirements for unclassified information technology resources.

As prescribed in 1804.470-4(a), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2011)

(a) The contractor shall protect the confidentiality, integrity, and availability of NASA Electronic Information and IT resources and protect NASA Electronic Information from unauthorized disclosure.

(b) This clause is applicable to all NASA contractors and sub-contractors that process, manage, access, or store unclassified electronic information, to include Sensitive But Unclassified (SBU) information, for NASA in support of NASA's missions, programs, projects and/or institutional requirements. Applicable requirements, regulations, policies, and guidelines are identified in the Applicable Documents List (ADL) provided as an attachment to the contract. The documents listed in the ADL can be found at: <http://www.nasa.gov/offices/ocio/itsecurity/index.html>. For policy information considered sensitive, the documents will be identified as such in the ADL and made available through the Contracting Officer.

(c) *Definitions.* (1) IT resources means any hardware or software or interconnected system or subsystem of equipment, that is used to process, manage, access, or store electronic information.

(2) NASA Electronic Information is any data (as defined in the Rights in Data clause of this contract) or information (including information incidental to contract administration, such as financial, administrative, cost or pricing, or management information) that is processed, managed, accessed or stored on an IT system(s) in the performance of a NASA contract.

(3) IT Security Management Plan—This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. Unlike the IT security plan, which addresses the IT system, the IT Security Management Plan addresses how the contractor will manage personnel and processes associated with IT Security on the instant contract.

(4) IT Security Plan—this is a FISMA requirement; see the ADL for applicable requirements. The IT Security Plan is specific to the IT System and not the contract. Within 30 days after award, the contractor shall develop and deliver an IT Security Management Plan to the Contracting Officer; the approval authority will be included in the ADL. All contractor personnel requiring physical or logical access to NASA IT resources must complete NASA's annual IT Security Awareness training. Refer to the IT Training policy located in the IT Security Web site at <https://itsecurity.nasa.gov/policies/index.html>.

(d) The contractor shall afford Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA Electronic Information or to the function of IT systems operated on behalf of NASA, and to preserve evidence of computer crime.

(e) At the completion of the contract, the contractor shall return all NASA information and IT resources provided to the contractor during the performance of the contract in accordance with retention documentation available in the ADL. The contractor shall provide a listing of all NASA Electronic information and IT resources generated in performance of the contract. At that time, the contractor shall request disposition instructions from the Contracting Officer. The Contracting Officer will provide disposition instructions within 30 calendar days of the contractor's request. Parts of the clause and referenced ADL may be waived by the contracting officer, if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contracting Officer will notify the contractor,

by contract modification, which parts of the clause or provisions of the ADL are waived.

(f) The contractor shall insert this clause, including this paragraph in all subcontracts that process, manage, access or store NASA Electronic Information in support of the mission of the Agency.

(End of clause)

[76 FR 4080, Jan. 24, 2011, as amended at 80 FR 61994, Oct. 15, 2015]

#### **1852.208-81 Restrictions on Printing and Duplicating.**

As prescribed in 1808.870, insert the following clause:

##### **RESTRICTIONS ON PRINTING AND DUPLICATING (NOV 2004)**

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101-9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10-<sup>3</sup>/<sub>4</sub> by 14-<sup>1</sup>/<sub>4</sub> inches. A "production unit" is one sheet, size 8-<sup>1</sup>/<sub>2</sub> × 11 inches (215 × 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request

approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPR 1490.5, NASA Procedural Requirements for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[66 FR 53548, Oct. 23, 2001, as amended at 69 FR 63459, Nov. 2, 2004]

**1852.209-70 [Reserved]**

**1852.209-71 Limitation of future contracting.**

As prescribed in 1809.507-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507-2:

LIMITATION OF FUTURE CONTRACTING (DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements or work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other

companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

**1852.209-72 [Reserved]**

**1852.211-70 Packaging, handling, and transportation.**

As prescribed in 1811.404-70, insert the following clause:

PACKAGING, HANDLING, AND TRANSPORTATION (SEP 2005)

(a) The Contractor shall comply with NASA Procedural Requirements (NPR) 6000.1, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components", as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[65 FR 37062, June 13, 2000, as amended at 70 FR 52941, Sept. 6, 2005]

**1852.213-70 Offeror Representations and Certifications—Other Than Commercial Items.**

As prescribed in 1813.302-570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS (JUL 2004)

(a) *Definitions.* As used in this provision—  
 "Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.  
 "Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent

amounts arising out of the offeror’s relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) Taxpayer Identification Number (TIN).

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other \_\_\_\_\_.

(5) Common parent.

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror

represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness

Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

—50 or fewer	—\$1 million or less.
—51-100	—\$1,000,001-\$2 million.
—101-250	—\$2,000,001-\$3.5 million.
—251-500	—\$3,500,001-\$5 million.
—501-750	—\$5,000,001-\$10 million.
—751-1000	—\$10,000,001-\$17 million.
—Over 1000	—Over \$17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph

(c)(7)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed \$25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) [The offeror shall check the category in which its ownership falls]:

- Black American.
- Hispanic American.
- Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Buy American Act Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act-Supplies."

(2) Foreign End Products:

*Line Item No. and Country of Origin*

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(f)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act"

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act: NAFTA Country or Israeli End Products:

*Line Item No. and Country of Origin*

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act." The offeror shall list as other foreign end products those end products

manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

*Line Item No. and Country of Origin*

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (JAN 2004). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":  
Canadian End Products:

*Line Item No.*

[List as necessary]

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (JAN 2004). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian or Israeli End Products:

*Line Item No. and Country of Origin*

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-

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made, designated country, Caribbean Basin country, or NAFTA country end products.

(End of provision)

Other End Products:

Line Item No. and Country of Origin

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (g)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at FAR 22.1503(b).]

(1) Listed end products.

Listed End Product and Listed Countries of Origin

\_\_\_\_\_  
\_\_\_\_\_

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

Alternate I (MAR 2004) As prescribed in 1813.302-570(a)(2)(i), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

Alternate II (MAR 2004) As prescribed in 1813.302-570(a)(2)(ii), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College or University and Minority Institution Representation

(1) Definitions. As used in this provision—  
“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) Representation. The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

Alternate III (MAR 2004) As prescribed in 1813.302-570(a)(2)(iii), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation of Limited Rights Data and Restricted Computer Software

(1) This solicitation sets forth the work to be performed if a contract award results, and the Government’s known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at FAR 52.227-16, if included in the contract. Any data delivered under the resulting contract will be subject to the

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Rights in Data-General clause at FAR 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at FAR 52.227-14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data-General."

[67 FR 38905, June 6, 2002, as amended at 69 FR 13261, Mar. 22, 2004; 69 FR 44610, July 27, 2004]

**1852.213-71 Evaluation—Other Than Commercial Items.**

As prescribed in 1813.302-570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS JUN 2002)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors con-

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sidered. The following factors shall be used to evaluate offers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[67 FR 38905, June 6, 2002, as amended at 67 FR 50824, Aug. 6, 2002]

**1852.214-70 Caution to offerors furnishing descriptive literature.**

As prescribed in 1814.201-670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING DESCRIPTIVE LITERATURE (DEC 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202-5.]

(End of provision)

[61 FR 47082, Sept. 6, 1996]

**1852.214-71 Grouping for Aggregate Award.**

As prescribed in 1814.201-670(b), insert the following provision:



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### GROUPING FOR AGGREGATE AWARD (MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

[Insert the item numbers and/or descriptions].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

[61 FR 47082, Sept. 6, 1996, as amended at 81 FR 36182, June 6, 2016]

### 1852.214-72 Full quantities.

As prescribed in 1814.201-670(c), insert the following provision:

#### FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

[61 FR 47082, Sept. 6, 1996, as amended at 81 FR 3339, Jan. 21, 2016]

### 1852.215-77 Preproposal/pre-bid conference.

As prescribed in 1815.209-70(a), insert the following provision:

#### PREPROPOSAL/PRE-BID CONFERENCE (APR 2015)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(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.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 80 FR 12945, Mar. 12, 2015; 80 FR 61994, Oct. 15, 2015; 82 FR 38853, Aug. 16, 2017]

### 1852.215-78 Make or buy program requirements.

As prescribed in 1815.408-70(a), insert the following provision:

**1852.215-79**

MAKE OR BUY PROGRAM REQUIREMENTS (FEB 1998)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.407-2. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as “must make,” “must buy,” or “can either make or buy.”

(c) For each item or work effort categorized as “can either make or buy,” a proposal either to “make” or “buy.”

(d) Reasons for (i) categorizing items and work effort as “must make” or “must buy” and (ii) proposing to “make” or “buy” those categorized as “can either make or buy.” The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror’s plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

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) A page is defined as one side of sheet, 8½” × 11”, with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8½” × 11” pages. The metric standard format most closely approximating the described standard 8½” × 11” size may also be used. 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

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(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 63 FR 32764, June 16, 1998]

**1852.215-79 Price adjustment for “Make-or-Buy” changes.**

As prescribed in 1815.408-70(b), insert the following clause:

PRICE ADJUSTMENT FOR “MAKE-OR-BUY” CHANGES (JUN 2018)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-9, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998; 81 FR 24501, Apr. 26, 2016; 83 FR 28386, June 19, 2018]

**1852.215-81 Proposal page limitations.**

As prescribed in 1815.209-70(d), insert the following provision:

PROPOSAL PAGE LIMITATIONS (APR 2015)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

and counted against that section’s page limitation.

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government’s request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998; 80 FR 12946, Mar. 12, 2015; 80 FR 68778, Nov. 6, 2015]

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**1852.215-85**

**1852.215-84 Ombudsman.**

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN (NOV 2011)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at: [http://prod.nais.nasa.gov/pub/pub\\_library/Omb.html](http://prod.nais.nasa.gov/pub/pub_library/Omb.html). Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solici-

tion, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

*Alternate I* (JUN 2000). As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

[62 FR 3484, Jan. 23, 1997, as amended at 65 FR 38777, June 22, 2000; 68 FR 62023, Oct. 31, 2003; 76 FR 72329, Nov. 23, 2011]

**1852.215-85 Proposal adequacy checklist.**

As prescribed in 1815.408-70(c), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (MAR 2014)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

**PROPOSAL ADEQUACY CHECKLIST**

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
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**GENERAL INSTRUCTIONS**

1. FAR 15.408, Table 15-2, Section I Paragraph A.	Is there a properly completed first page of the proposal per FAR 15.408 Table 15-2 I.A or as specified in the solicitation?		
2. FAR 15.408, Table 15-2, Section I Paragraph A(7).	Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the accountable contract number and contracting officer contact information if known..		
3. FAR 15.408, Table 15-2, Section I Paragraph A(8).	If your organization is subject to Cost Accounting Standards (CAS), does the proposal identify the current status of your CAS Disclosure Statement? Does the proposal identify and explain notifications of noncompliance with Cost Accounting Standards Board or Cost Accounting Standards (CAS); any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures?.		
4. FAR 15.408, Table 15-2, Section I, Paragraph C(1). FAR 2.101, "Cost or pricing data" ..	Does the proposal disclose any other known activity that could materially impact the costs?. This may include, but is not limited to, such factors as— (1) Vendor quotations; (2) Nonrecurring costs;.		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
<p>5. FAR 15.408, Table 15-2, Section I Paragraph B.</p> <p>6. FAR 15.403-1(b) .....</p> <p>7. FAR 15.408, Table 15-2, Section I Paragraph C(2)(i).</p> <p>8. FAR 15.408, Table 15-2, Section I Paragraph C(2)(ii).</p> <p>9. FAR 15.408 Table 15-2, Section II, Paragraph A or B.</p> <p>10. FAR 15.408, Table 15-2, Section I Paragraphs D and E.</p> <p>11. FAR 15.408, Table 15-2, Section I Paragraphs D and E.</p> <p>12. FAR 15.408, Table 15-2, Section I Paragraph F.</p> <p>13. FAR 15.408, Table 15-2, Section I Paragraph G.</p>	<p>(3) Information on changes in production methods and in production or purchasing volume;.</p> <p>(4) Data supporting projections of business prospects and objectives and related operations costs;.</p> <p>(5) Unit-cost trends such as those associated with labor efficiency;.</p> <p>(6) Make-or-buy decisions;.</p> <p>(7) Estimated resources to attain business goals; and.</p> <p>(8) Information on management decisions that could have a significant bearing on costs..</p> <p>Is an index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?.</p> <p>Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403-1(b)? If so, is supporting documentation included in the proposal? (Note questions 18-20.).</p> <p>Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data?.</p> <p>Does the proposal disclose the nature and amount of any contingencies included in the proposed price?.</p> <p>Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis?.</p> <p>Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system, including breakdown by year.).</p> <p>If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data?.</p> <p>Does the proposal identify any incurred costs for work performed before the submission of the proposal?.</p> <p>Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data. If not, does the proposal include all rates and factors by year that are utilized in the development of the proposal and the basis for those rates and factors?.</p>		
<b>COST ELEMENTS</b>			
<b>MATERIALS AND SERVICES</b>			
<p>14. FAR 15.408, Table 15-2, Section II Paragraph A.</p>	<p>Does the proposal include a consolidated summary of individual material and services, frequently referred to as a Consolidated Bill of Material (CBOM), to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price..</p>		
<b>SUBCONTRACTS (Purchased materials or services)</b>			
<p>15. FAR 15.404-3(c) ..... FAR 52.244-2</p>	<p>Per the thresholds of FAR 15.404-3(c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?.</p>		
<p>16. FAR 15.408, Table 15-2, Note 1; Section II Paragraph A.</p>	<p>Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal?.</p>		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
	If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis?.		
<b>EXCEPTIONS TO CERTIFIED COST OR PRICING DATA</b>			
17. FAR 52.215-20 ..... FAR 2.101, "commercial item"	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215-20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)? c. For proposed commercial items "of a type", or "evolved" or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?.		
18. FAR 15.408, Table 15-2, Section II Paragraph A(1).	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?.		
<b>INTERORGANIZATIONAL TRANSFERS</b>			
19. FAR 15.408, Table 15-2, Section II Paragraph A.(2).	For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15-2?.		
20. FAR 15.408, Table 15-2, Section II Paragraph A(1).	For inter-organizational transfers proposed at price in accordance with FAR 31.205-26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403-1?.		
<b>DIRECT LABOR</b>			
21. FAR 15.408, Table 15-2, Section II Paragraph B.	Does the proposal include a time phased (i.e.; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied..		
22. FAR 15.408, Table 15-2, Section II Paragraph B.	For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, and task descriptions, (e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)?.		
23. FAR subpart 22.10 .....	If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute?.		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
<b>INDIRECT COSTS</b>			
24. FAR 15.408, Table 15-2, Section II Paragraph C.	Does the proposal indicate the basis of estimate for proposed indirect costs and how they are applied? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.).		
<b>OTHER COSTS</b>			
25. FAR 15.408, Table 15-2, Section II Paragraph D.	Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)?.		
26. FAR 15.408, Table 15-2, Section II Paragraph E.	If royalties exceed \$1,500 does the proposal provide the information/data identified by Table 15-2?.		
27. FAR 15.408, Table 15-2, Section II Paragraph F.	When facilities capital cost of money is proposed, does the proposal include submission of Form CASB-CMF or reference to an FPRA/FRP and show the calculation of the proposed amount?.		
<b>FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES</b>			
28. FAR 15.408, Table 15-2, Section III.	Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15-2 III? (or alternative format if specified in the request for proposal).		
29. FAR 15.408, Table 15-2, Section III Paragraph B.	If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15-2.III.B?.		
30. FAR 15.408, Table 15-2, Section III Paragraph C.	For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15-2.III.C?.		
<b>OTHER</b>			
31. FAR 16.4 .....	If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price?.		
32. FAR 16.203-4 and FAR 15.408 Table 15-2, Section II, Paragraphs A, B, C, and D.	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment?.		
33. FAR 52.232-28 .....	If the offeror is proposing Performance-Based Payments—did the offeror comply with FAR 52.232-28?.		
34. FAR 15.408(n) ..... FAR 52.215-22 FAR 52.215-23	Excessive Pass-through Charges—Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?.		

(End of provision)

AWARD TERM (AUG 2017)

[79 FR 10688, Feb. 26, 2014]

**1852.216-72 Award term.**

As prescribed in 1816.406-70(g), insert the following clause:

(a) Based on overall Contractor performance as evaluated in accordance with the Award Term Plan, the Contracting Officer may extend the contract for the number and duration of award terms as set forth in the Award Term Plan.

(b) The Contracting Officer will execute any earned award term period(s) through a unilateral contract modification. All contract provisions continue to apply throughout the contract period of performance or ordering period, including any award term period(s).

(c) The Government will evaluate offerors for award purposes by adding the total price for all options and award terms to the price for the basic requirement. This evaluation will not obligate the Government to exercise any options or award term periods.

(d) The Award Term Plan is attached in Section J. The Award Term Plan provides the methodology and schedule for evaluating Contractor performance, determining eligibility for an award term, and, together with Agency need for the contract and availability of funding, serves as the basis for award term decisions. The Contracting Officer may unilaterally revise the Award Term Plan. Any changes to the Award Term Plan will be in writing and incorporated into the contract through a unilateral modification citing this clause prior to the commencement of any evaluation period. The Contracting Officer will consult with the Contractor prior to the issuance of a revised Award Term Plan; however, the Contractor's consent is not required.

(e) The award term evaluation(s) will be completed in accordance with the schedule in the Award Term Plan. The Contractor will be notified of the results and its eligibility to be considered for the respective award term no later than 120 days after the evaluation period set forth in the Award Term Plan. The Contractor may request a review of an award term evaluation which has resulted in the Contractor not earning the award term. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(f)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plan if—

(i) The Contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the Contractor fails to earn an award term in any succeeding year of contract performance, the Contracting Officer may cancel any award terms that the Contractor has earned, but that have not begun;

(iii) The Contracting Officer has notified the Contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The Contractor represented that it was a small business concern prior to award of this contract, the contract was set-aside for small businesses, and the Contractor rerep-

resents in accordance with FAR clause 52.219-28, Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The Contracting Officer has notified the Contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected, except as provided in paragraph (g) of this clause; or

(ii) Subsequent award term periods are also cancelled.

(g) Cancellation of an award term period that has not yet started for any of the reasons set forth in paragraph (f) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation.

(h) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraphs (f) and (g) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite this clause as the authority.

(i) Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

[82 FR 34419, July 25, 2017]

**1852.216-73 Estimated cost and cost sharing.**

As prescribed in 1816.307-70(a), insert the following clause:

ESTIMATED COST AND COST SHARING (DEC 1991)

(a) It is estimated that the total cost of performing the work under this contract will be \$ \_\_\_\_\_.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than \_\_\_\_ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining \_\_\_\_ percent or more

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of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the \_\_\_\_\_ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$\_\_\_\_\_ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

[62 FR 3484, Jan. 23, 1997]

**1852.216-74 Estimated cost and fixed fee.**

As prescribed in 1816.307-70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE (DEC 1991)

The estimated cost of this contract is \_\_\_\_\_ exclusive of the fixed fee of \_\_\_\_\_. The total estimated cost and fixed fee is \_\_\_\_\_.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

**1852.216-75 Payment of fixed fee.**

As prescribed in 1816.307-70(c), insert the following clause:

PAYMENT OF FIXED FEE (DEC 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

**1852.216-76 Award fee for service contracts.**

As prescribed in 1816.406-70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS (JUN 2018)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6\* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6\* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment].

(d) The Contracting Officer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contract's total potential award fee or \$100,000, whichever is less.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [insert "will" or "will not", as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.



(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert "will" or "will not", as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

[77 FR 18106, Mar. 27, 2012, as amended at 83 FR 28386, June 19, 2018]

**1852.216-77 Award fee for end item contracts.**

As prescribed in 1816.406-70(b), insert the following clause:

**AWARD FEE FOR END ITEM CONTRACTS (AUG 2016)**

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6\* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6\* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [identify performance evaluation plan] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [Insert "monthly", or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period less any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [insert "not" if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [insert applicable cite]), except for the first evaluation period which is limited to [insert a percent not to exceed 80 percent] of the available award fee for that evaluation period. Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the [insert payment office] based

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on [Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].

(d) The Contracting Officer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contracts total potential award fee or \$100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

[77 FR 18106, Mar. 27, 2012, as amended at 81 FR 50366, Aug. 1, 2016]

**1852.216-78 Firm fixed price.**

As prescribed in 1816.202-70, insert the following clause:

**FIRM FIXED PRICE (DEC 1988)**

The total firm fixed price of this contract is \$ [Insert the appropriate amount].

(End of clause)

[62 FR 3485, Jan. 23, 1997]

**1852.216-80 Task ordering procedure.**

As prescribed in 1816.506-70, insert the following clause:

**TASK ORDERING PROCEDURES (OCT 1996)**

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost in-

formation, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within \_\_\_ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within \_\_\_ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

*Alternate I (APR 2018)* As prescribed in 1816.506-70(a), insert the following paragraph (i):

(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

(1) Contract number, task order number, and date of the order.

(2) Total estimated dollar amount of task order(s).

(3) Cost and hours incurred to date for each issued task order.

(4) Costs and hours estimated to complete each issued task order.

(5) Significant issues/problems associated with a task order.

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(6) Cost summary of the status of all task orders issued under the contract.

(7) Invoice number.

*Alternate II* (APR 2018) As prescribed in 1816.506-70(b), insert the following paragraph (i):

(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

(1) Contract number, task order number, and date of the order.

(2) Price and billed amounts to date for each task order.

(3) Significant issues/problems associated with the task order.

(4) Status of all task orders issued under the contract.

(5) Invoice number.

[62 FR 3485, Jan. 23, 1997, as amended at 83 FR 13115, Mar. 27, 2018]

**1852.216-81 Estimated cost.**

As prescribed in 1816.307-70(d), insert the following clause:

ESTIMATED COST (DEC 1988)

The total estimated cost for complete performance of this contract is \$ \_\_\_\_\_. [Insert total estimated cost of the contract]. See FAR clause 52.216-11, Cost Contract—No Fee, of this contract.

(End of clause)

[62 FR 3486, Jan. 23, 1997]

**1852.216-83 Fixed price incentive.**

As prescribed in 1816.406-70(c), insert the following clause:

FIXED PRICE INCENTIVE (OCT 1996)

The target cost of this contract is \$ \_\_\_\_\_. The Target profit of this contract is \$ \_\_\_\_\_. The target price (target cost plus target profit) of this contract is \$ \_\_\_\_\_. [The ceiling price is \$ \_\_\_\_\_.]

The cost sharing for target cost underruns is: Government \_\_\_\_ percent; Contractor \_\_\_\_ percent.

The cost sharing for target cost overruns is: Government \_\_\_\_ percent; Contractor \_\_\_\_ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

**1852.216-84 Estimated cost and incentive fee.**

As prescribed in 1816.406-70(d), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (OCT 1996)

The target cost of this contract is \$ \_\_\_\_\_. The target fee of this contract is \$ \_\_\_\_\_. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are \$ \_\_\_\_\_.

The maximum fee is \$ \_\_\_\_\_.

The minimum fee is \$ \_\_\_\_\_.

The cost sharing for cost underruns is: Government \_\_\_\_ percent; Contractor \_\_\_\_ percent.

The cost sharing for cost overruns is: Government \_\_\_\_ percent; Contractor \_\_\_\_ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

**1852.216-85 Estimated cost and award fee.**

As prescribed in 1816.406-70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE (SEP 1993)

The estimated cost of this contract is \$ \_\_\_\_\_. The maximum available award fee, excluding base fee, if any, is \$ \_\_\_\_\_. The base fee is \$ \_\_\_\_\_. Total estimated cost, base fee, and maximum award fee are \$ \_\_\_\_\_.

(End of clause)

*Alternate I* (SEP 1993). As prescribed in 1816.405-70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is \$ \_\_\_\_\_. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [*total potential award fee amount, including any base fee*].

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

**1852.216-87 [Reserved]**

**1852.216-88 Performance incentive.**

As prescribed in 1816.406-70(f), insert the following clause:

PERFORMANCE INCENTIVE (APR 2015)

(a) A performance incentive applies to the following item(s) under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes when the item is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) *Standard performance level.* At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) \_\_\_ is established as follows: (2).

(c) *Positive incentive.* The Contractor earns a separate positive incentive amount for each item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of \$ (3) \_\_\_ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) *Negative incentive.* The Contractor will pay to the Government a negative incentive amount for each item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of \$ (5) \_\_\_. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within [insert number of months or years] after the date of acceptance by the Government, the Contractor will be paid [insert percentage] of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) descriptor and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402-270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402-270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997; 80 FR 12946, Mar. 12, 2015; 80 FR 50212, Aug. 19, 2015]

#### **1852.216-89 Assignment and release forms.**

As prescribed in 1816.307-70(f), insert the following clause:

##### ASSIGNMENT AND RELEASE FORMS (AUG 2016)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216-7, Allowable Cost and Payment:

NASA Form 778, Contractor's Release;  
 NASA Form 779, Assignee's Release;  
 NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and  
 NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253-1, Computer Generated Forms.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 81 FR 50366, Aug. 1, 2016]

#### **1852.216-90 Allowability of legal costs incurred in connection with a whistleblower proceeding.**

As prescribed in 1816.307-70(g), use the following clause:

##### ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING (AUG 2014)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112-239), notwithstanding FAR

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clause 52.216-7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205-47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled "Contractor employees: protection from reprisal for disclosure of certain information;" and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)

[79 FR 43961, July 29, 2014, as amended at 79 FR 51501, Aug. 29, 2014; 80 FR 61994, Oct. 15, 2015]

1852.217-70 [Reserved]

1852.217-71 Phased acquisition using down-selection procedures.

As prescribed in 1817.7002(a), insert the following clause:

PHASED ACQUISITION USING DOWN-SELECTION PROCEDURES (APR 2015)

(a) This solicitation is for the acquisition of \_\_\_\_\_ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the \_\_\_\_\_ [insert purpose of phase]. Phase 2 is for \_\_\_\_\_ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be synopsisized in the Governmentwide Point of Entry (GPE) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contrac-

tors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based:

\_\_\_\_\_ [(insert the specific Phase 1 deliverables)]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

- Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000; 76 FR 72330, Nov. 23, 2011; 80 FR 12946, Mar. 12, 2015; 80 FR 75843, Dec. 4, 2015]

1852.217-72 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1817.7002(b), insert the following clause:

PHASED ACQUISITION USING PROGRESSIVE COMPETITION DOWN-SELECTION PROCEDURES (NOV 2011)

(a) This solicitation is for the acquisition of \_\_\_\_\_ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase

1. It is expected that the single contractor for Phase 2 will be chosen from among these

contractors after a competitive down-selection.

(b) Phase 1 is for the [insert purpose of phase]. Phase 2 is for [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of [indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be synopsisized in the Governmentwide Point of Entry (GPE) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source to all the material furnished to the Phase 1 contractors that is necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: [insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase 2.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—  
Phase 2 synopsis—  
Phase 2 proposal requested—  
Phase 2 proposal receipt—  
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000; 76 FR 72330, Nov. 23, 2011; 81 FR 24501, Apr. 26, 2016; 81 FR 71638, Oct. 18, 2016]

#### 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 (APR 2015)

(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

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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)

[80 FR 12946, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**1852.219-73 Small business subcontracting plan.**

As prescribed in 1819.708-70(a), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN  
(MAY 1999)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219-9, "Small Business Subcontracting Plan." The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25215, May 11, 1999]

**1852.219-74 [Reserved]**

**1852.219-75 Individual Subcontracting Reports.**

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

INDIVIDUAL SUBCONTRACTING REPORTS (APR 2015)

When submitting Individual Subcontracting Reports in eSRS in accordance with FAR 52.219-9(1) (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)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**1852.219-76 [Reserved]**

**1852.219-77 NASA Mentor-Protégé Program.**

As prescribed in 1819.7215, insert the following clause:

NASA MENTOR-PROTÉGÉ PROGRAM (APR 2015)

(a) Prime contractors are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(End of clause)

[80 FR 12946, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**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 (APR 2015)

(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.

(b) The Program consists of:

(1) Mentors, which are large businesses and prime contractors with at least one active and approved NASA subcontracting plan;

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, meeting the qualifications defined in FAR part 2, Definitions of Parts and Term, active NASA SBIR Phase II companies or nonprofit agencies employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

(3) Mentor-protégé agreements endorsed by the cognizant NASA centers and approved by the NASA Office of Small Business Programs (OSBP);

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7208.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSBP, Washington, DC 20546, (202) 358-2088, for further information.

(End of clause)

[74 FR 25676, May 29, 2009, as amended at 80 FR 12947, Mar. 12, 2015; 80 FR 50212, Aug. 19, 2015]

**1852.219-79 Mentor requirements and evaluation.**

As prescribed in 1819.7215, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION  
(APR 2015)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés.

Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, as defined in FAR part 2, Definitions of Parts and Terms, active

NASA SBIR/STTR Phase II companies and nonprofit agencies employing the blind or severely handicapped as defined in 41 CFR chapter 51.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) To what extent the entities' participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

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

(c) Semiannual reports shall be submitted by the mentor and the protégé to the cognizant NASA center and NASA Headquarters Office of Small Business Programs (OSBP), following the semiannual report template found on the Web site at <http://www.osbp.nasa.gov>.

(d) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments, as it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement.



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(End of clause)

[54 FR 28340, July 5, 1989, as amended at 80 FR 12947, Mar. 12, 2015; 80 FR 50212, Aug. 19, 2015]

**1852.219-80 Limitation on subcontracting—SBIR Phase I program.**

As prescribed in 1819.7302(a), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE I PROGRAM (OCT 2006)

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

**1852.219-81 Limitation on subcontracting—SBIR Phase II program.**

As prescribed in 1819.7302(b), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE II PROGRAM (OCT 2006)

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

**1852.219-82 Limitation on subcontracting—STTR program.**

As prescribed in 1819.7302(c), insert the following clause:

LIMITATION ON SUBCONTRACTING—STTR PROGRAM (OCT 2006)

The Contractor shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution. Since the selection of R&D contractors is

substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

**1852.219-83 Limitation of the principal investigator—SBIR program.**

As prescribed in 1819.7302(d), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—SBIR PROGRAM (OCT 2006)

The primary employment of the principal investigator (PI) shall be with the small business concern (SBC)/Contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of clause)

[71 FR 61688, Oct. 19, 2006]

**1852.219-84 Limitation of the principal investigator—STTR program.**

As prescribed in 1819.7302(e), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—STTR PROGRAM (OCT 2006)

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

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(End of clause)

[71 FR 61688, Oct. 19, 2006]

**1852.219-85 Conditions for final payment—SBIR and STTR contracts.**

As prescribed in 1819.7302(f), insert the following clause:

**CONDITIONS FOR FINAL PAYMENT—SBIR AND STTR CONTRACTS (OCT 2006)**

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;
2. No other Federal funding award has been received for essentially equivalent work performed under this contract;
3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;
4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by the Contracting Officer on (insert date of approval or modification number.);
5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;
6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on (insert date of approval or modification number); and
7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/ Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on (insert date of approval or modification number).

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 USC, Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

48 CFR Ch. 18 (10-1-21 Edition)

**1852.223-70 Safety and Health Measures and Mishap Reporting.**

As prescribed in 1823.7001(a), insert the following clause:

**SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015)**

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall maintain an effective worksite safety and health program with organized and systematic methods to—

- (1) Comply with Federal, State, and local safety and occupational health laws and with the safety and occupational health requirements of this contract;
- (2) Describe and assign the responsibilities of managers, supervisors, and employees;
- (3) Inspect regularly for and identify, evaluate, prevent, and control hazards;
- (4) Orient and train employees to eliminate or avoid hazards; and
- (5) Periodically review the program's effectiveness. Authorized Government representatives shall have access to and the right to examine the work site and related records under this Contract in order to determine the adequacy of the Contractor's safety and occupational health measures.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health-measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify the Contracting Officer or a designee any Type A, B, C, or D Mishap, or close calls as defined in NASA Procedural Requirement (NPR) 8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall cooperate with any Government-authorized investigation of Type A, B, C, or D Mishaps, or Close Calls reported pursuant to paragraph (d) of this clause by providing access to employees; and relevant information in the possession of the Contractor regarding the mishap or close call.

(f)(1) The Contracting Officer may notify the Contractor of any noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer will notify the Contractor orally, with written confirmation. The Contractor shall promptly take corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may—

(i) Invoke the stop-work order clause in this contract;

(ii) Require the Contractor to remove and replace Contractor or subcontractor personnel who fail to comply with or violate applicable requirements of this clause;

(iii) Record the Contractor's failure to comply in the appropriate databases of past performance; and

(iv) Consider the Contractor's failure to comply in any responsibility determination or evaluation of past performance.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g) in all subcontracts above the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

(End of clause)

[80 FR 73677, Nov. 25, 2015]

**1852.223-71 Authorization for Radio Frequency Use.**

As prescribed in 1823.7101, insert the following clause:

AUTHORIZATION FOR RADIO FREQUENCY USE  
(APR 2015)

(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 sub-

contractor 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)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**1852.223-72 Safety and health (short form).**

As prescribed in 1823.7001(f), insert the following clause:

SAFETY AND HEALTH (SHORT FORM) (JUL 2015)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA is committed to protecting the safety and health of the public, our team members, and those assets that the Nation entrusts to the Agency.

(b) The Contractor shall have a documented, comprehensive and effective health and safety program with a proactive process to identify, assess, and control hazards and take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c) in subcontracts that exceed the simplified acquisition threshold where work will be conducted completely or partly on Federally-controlled facilities.

(End of clause)

[80 FR 36722, June 26, 2015]

**1852.223-73 Safety and health plan.**

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (JUL 2015)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal. The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

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(b) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts or subcontract effort where the work will be conducted completely or partly on a Federally-controlled facility.

(c) This plan, as approved by the Contracting Officer, will be incorporated into any resulting contract.

(End of clause)

Alternate I (JUL 2015)

As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan. The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

[80 FR 36722, June 26, 2015, as amended at 81 FR 12420, Mar. 9, 2016; 81 FR 24501, Apr. 26, 2016; 81 FR 71638, Oct. 18, 2016]

1852.223-74 Drug- and alcohol-free workforce.

As prescribed in 1823.570-2, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (NOV 2015)

(a) Definitions.

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

Mission Critical Space Systems means the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.

Mission Critical Positions/Duties means positions or duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission.

(b)(1) The Contractor shall institute and maintain a program for achieving a drug-

and alcohol-free workforce. As a minimum, the program shall provide for pre-employment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) In determining which positions to designate as "sensitive," the contractor may use the guidelines for determining testing designated positions in NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, as a guide for the criteria and in designating "sensitive" positions for contractor employees.

(3) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (73 FR 71858) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

(i) The Contractor shall test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates and Phencyclidine (PCP) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Mandatory Guidelines, Section 3.1, and 49 CFR 40.85.

(ii) The contractor shall comply with the requirements and procedures for alcohol testing at 49 CFR part 40.

(iii) The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements this clause.

(5) The contractor shall conduct post-accident testing when the contractor determines the employee's actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed \$20,000. Upon request, the Contractor shall provide the results of post-accident testing to the Contracting Officer.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such

individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[61 FR 7226, Feb. 27, 1996, as amended at 69 FR 60968, Oct. 14, 2004; 80 FR 60554, Oct. 7, 2015]

**1852.223-75 Major breach of safety or security.**

As prescribed in 1823.7001(e)(1), insert the following clause:

**MAJOR BREACH OF SAFETY OR SECURITY (FEB 2002)**

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor

**1852.223-76**

shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

*Alternate I* (FEB 2006) As prescribed in 1823.7001(e)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(End of clause)

[65 FR 37061, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18053, Apr. 5, 2001; 67 FR 7618, Feb. 20, 2002; 71 FR 8989, Feb. 22, 2006; 81 FR 24501, Apr. 26, 2016]

**48 CFR Ch. 18 (10-1-21 Edition)**

**1852.223-76 Federal Automotive Statistical Tool Reporting.**

As prescribed at 1823.271 and 1851.205, insert the following clause:

FEDERAL AUTOMOTIVE STATISTICAL TOOL REPORTING (JUL 2003)

If authorized to operate Government-owned or -leased vehicles, including inter-agency fleet management system (IFMS) vehicles or related services in performance of this contract, the Contractor shall report the data describing vehicle usage required by the Federal Automotive Statistical Tool (FAST) by October 15 of each year. FAST is accessed through <https://fastweb.inel.gov/>.

(End of clause)

[68 FR 43334, July 22, 2003, as amended at 80 FR 50212, Aug. 19, 2015]

**1852.225-8 Duty-free entry of space articles (FEB 2000).**

As prescribed in 1825.1101(e), add the following paragraph (k) to the basic clause at FAR 52.225-8:

(k) The following supplies will be given duty-free entry:  
[Insert the supplies that are to be accorded duty-free entry.]

(End of addition)

[65 FR 10033, Feb. 25, 2000]

**1852.225-70 Export Licenses.**

As prescribed in 1825.1103-70(b), insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, and the Export Administration Regulations (EAR), 15 CFR parts 730-799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

*Alternate I* (FEB 2000). As prescribed in 1825.1103-70(b), add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[65 FR 6916, Feb. 11, 2000, as amended at 65 FR 10033, Feb. 25, 2000]

**1852.225-72 [Reserved]**

**1852.227-11 Patent Rights—Ownership by the Contractor (APR 2015).**

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 pe-

riod 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)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.227-14

48 CFR Ch. 18 (10-1-21 Edition)

1852.227-14 Rights In Data—General (APR 2015).

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.

GOVERNMENT RIGHTS NOTICE

This work was authored by employees of [insert the name of the Contractor] under Contract No. [insert contract number] with the National Aeronautics and Space Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, or allow others to do so, for United States Government purposes. All other rights are reserved by the copyright owner.

(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 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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tract No. [insert contract number] with the National Aeronautics and Space Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, or allow others to do so, for United States Government purposes. All other rights are reserved by the copyright owner.

(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)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.227-17 [Reserved]

1852.227-19 Commercial computer software—Restricted rights (JUL 1997).

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227-19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding



any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227-19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990, as amended at 55 FR 47480, Nov. 14, 1990; 55 FR 53153, Dec. 27, 1990; 62 FR 36734, July 9, 1997]

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

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

NEW TECHNOLOGY—OTHER THAN A SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION (APR 2015)

(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 protectable 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 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.*).

(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, non-transferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with

any treaty or agreement with the United States; and

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

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

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention 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)

[80 FR 12948, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015; 81 FR 13747, Mar. 15, 2016]

**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 Non-profit Organization:

## REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 2015)

(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.

**1852.227-72**

(End of provision)

[80 FR 12950, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**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 (APR 2015)

(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](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)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**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

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be a small business or a nonprofit organization:

PATENT RIGHTS CLAUSES (APR 2015)

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)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**1852.227-85 Invention Reporting and Rights—Foreign.**

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

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 2015)

(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, non-transferable, 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)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

**1852.227-86 Commercial Computer Software License.**

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

COMMERCIAL COMPUTER SOFTWARE LICENSE  
(APR 2015)

(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)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

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

As prescribed in 1827.409(m)(1), insert the following clause:

GOVERNMENT-FURNISHED COMPUTER SOFTWARE AND RELATED TECHNICAL DATA (APR 2015)

(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)

[80 FR 12952, Mar. 12, 2015, as amended at 80 FR 61994, Oct. 15, 2015; 81 FR 24501, Apr. 26, 2016]

**1852.228-70 Aircraft ground and flight risk.**

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other non-conventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to

that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incidental to work being performed under the contract.

**AIRCRAFT GROUND AND FLIGHT RISK (OCT 1996)**

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If

the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in

fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first \$1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for the first \$1,000 of loss or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar

amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that

damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

[61 FR 55772, Oct. 29, 1996]

#### **1852.228-71 Aircraft flight risks.**

(a) As prescribed in 1828.311-270(a), insert the following clause:

##### **AIRCRAFT FLIGHT RISKS (DEC 1988)**

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimburse-

ment, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds \$100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under

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this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 61 FR 55774, Oct. 29, 1996; 81 FR 24501, Apr. 26, 2016]

### 1852.228-75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

#### MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least \$500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of

America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

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

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

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

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

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

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

(2) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage.

(3) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(4) "Partner State" includes each Contracting Party for which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A

Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

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

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

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

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

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

(8) "Related Entity" means:

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

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

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

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

(c) Cross-waiver of liability:

(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through

(c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

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

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

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

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

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

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

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

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

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

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

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

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

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

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

[77 FR 59342, Sept. 27, 2012]

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

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

CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (OCT 2012)

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

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

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

(2) "*Damage*" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) "*Launch Vehicle*" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

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

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

(6) "*Protected Space Operations*" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities un-

related to the ISS that involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the Agreement are completed. It includes, but is not limited to:

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

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

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

(7) "*Related entity*" means:

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

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

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

NOTE TO PARAGRAPH (a)(7): The terms "contractors" and "subcontractors" include suppliers of any kind.

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

(c) Cross-waiver of liability:

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party;

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

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

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

**1852.228-80**

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

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

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

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

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

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

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

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

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

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

[77 FR 59342, Sept. 27, 2012]

**1852.228-80 Insurance—Immunity From Tort Liability.**

As prescribed in 1828.311-270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY (SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a rep-

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resentation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, and the associated NFS clause 1852.228-81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

[65 FR 54440, Sept. 8, 2000]

**1852.228-81 Insurance—Partial Immunity From Tort Liability.**

As prescribed in 1828.311-270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228-7, Insurance—Liability to Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228-7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

**1852.228-82 Insurance—Total Immunity From Tort Liability.**

As prescribed in 1828.311-270(d), insert the following clause:



INSURANCE—TOTAL IMMUNITY FROM TORT  
LIABILITY (SEP 2000)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

**1852.231-70 Precontract costs.**

As prescribed in 1831.205-70, insert the following clause:

## PRECONTRACT COSTS (JUN 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[60 FR 29505, June 5, 1995]

**1852.231-71 Determination of compensation reasonableness.**

As prescribed at 1831.205-671, insert the following provision.

DETERMINATION OF COMPENSATION  
REASONABLENESS (APR 2015)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of

labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222-46, "Evaluation of Compensation for Professional Employees."

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fall within the scope of any classification listed in the applicable wage determination.

(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)

[62 FR 4474, Jan. 30, 1997, as amended at 80 FR 12953, Mar. 12, 2015; 81 FR 71638, Oct. 18, 2016]

**1852.232-70 NASA modification of FAR 52.232-12.**

As prescribed at 1832.412-70, make the following modifications:

NASA MODIFICATION OF FAR 52.232-12, (MAR 1998)

(a) *Basic clause.* (1) In paragraph (e), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed \$ \_\_\_ at any time outstanding. In addition. \* \* \*."

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

(b) Alternate II (if incorporated in the contract). In paragraph (e), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed \$ \_\_\_ at any time outstanding. In addition. \* \* \*."

(c) Alternate V (if incorporated in the contract). (1) Substitute the following for paragraph (b): "(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contracting

office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in part 31, or subpart 1831.2.”

(2) In paragraph (d), Maximum Payment, in the sentence that begins “When the sum of,” change the word “When” to lower case and insert before it: “Unliquidated advance payments shall not exceed \$ \_\_\_ at any time outstanding. In addition. \* \* \*.”

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

(4) If this is a Phase I contract awarded under the SBIR or STTR programs, delete paragraph (a) and substitute the following: “(a) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked “Small Business Innovation Research Contract” or “Small Business Technology Transfer Contract,” as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor’s final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments.”

(End of clause)

[63 FR 14040, Mar. 24, 1998, as amended at 80 FR 12953, Mar. 12, 2015]

**1852.232-77 Limitation of funds (fixed-price contract).**

As prescribed in 1832.705-270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items \_\_\_ through \_\_\_, the sum of \$ \_\_\_ is presently available for payment and allotted to this contract. It

is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date	Amounts
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(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until \_\_\_.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified

in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

**1852.232-79 Payment for on-site preparatory costs.**

As prescribed in 1832.111-70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS  
(SEP 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site pre-

paratory costs will not be made by the Government.

(End of clause)

**1852.232-80 Submission of vouchers for payment.**

As prescribed in 1832.908-70, insert the following clause:

SUBMISSION OF VOUCHERS/INVOICES FOR  
PAYMENT (APR 2018)

(a) The designated payment office is the NASA Shared Services Center (NSSC) located at FMD Accounts Payable, Bldg. 1111, Jerry Hlass Road, Stennis Space Center, MS 39529.

(b) Except for classified vouchers, the Contractor shall submit all vouchers and invoices using the steps described at NSSC's Vendor Payment information Web site at: <https://www.nssc.nasa.gov/vendorpayment>. Please contact the NSSC Customer Contact Center at 1-877-NSSC123 (1-877-677-2123) with any additional questions or comments.

(c) *Payment requests.*

(1) The payment periods are stipulated in the payment clause(s) contained in this contract.

(2) Vouchers submitted under cost type contracts and invoices submitted under fixed-price contracts shall include the items delineated in FAR 32.905(b) supported by relevant back-up documentation. Back-up documentation shall include at a minimum, the following information:

(i) *Vouchers.*

(A) Breakdown of billed labor costs and associated contractor generated supporting documentation for billed direct labor costs to include rates used and number of hours incurred.

(B) Breakdown of billed other direct costs (ODCs) and associated contractor generated supporting documentation for billed ODCs.

(C) Indirect rate(s) used to calculate the amount of billed indirect expenses.

(D) Progress reports, as required.

(ii) *Invoices.*

(A) Description of goods and services delivered as part of the contract's terms and conditions, including the dates of delivery/performance.

(B) Progress reports, as required.

(C) Date goods and services were performed.

(iii) *Fee vouchers.*

(A) Listing of all provisionally-billed fee by period or date earned since contract award.

(B) A reconciliation of all billed and earned fee.

(C) A clear explanation of the fee calculations.

(d) *Non-electronic payment requests.* The Contractor may submit a non-electronic

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voucher/invoice using the steps for non-electronic payment requests described at <https://www.nssc.nasa.gov/vendorpayment>, when any of the following conditions are met:

(1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor.

(2) The contract includes provisions allowing the contractor to submit vouchers or invoices using the steps for non-electronic payment. In such instances the Contractor agrees to submit non-electronic payment requests using the method or methods specified in Section G of the contract.

(e) Improper vouchers/invoices. The NSSC Payment Office will notify the contractor of any apparent error, defect, or impropriety in a voucher/invoice within seven calendar days of receipt by the NSSC Payment Office. Inquiries regarding requests for payment should be directed to the NSSC as specified in paragraph (b) of this section.

(f) *Other payment clauses.* In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(g) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate payment request for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[81 FR 63145, Sept. 14, 2016, as amended at 83 FR 13115, Mar. 27, 2018]

**1852.232-81 Contract funding.**

As prescribed in 1832.705-270(b), insert the following clause:

**CONTRACT FUNDING (JUN 1990)**

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is \$ \_\_\_\_\_. This allotment is for [Insert applicable item number(s), task(s), or work description] \_\_\_\_\_ and covers the following estimated period of performance: \_\_\_\_\_.

(b) An additional amount of \$ \_\_\_\_\_ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 57 FR 40856, Sept. 8, 1992]

**48 CFR Ch. 18 (10-1-21 Edition)**

**1852.232-82 Submission of requests for progress payments.**

As prescribed in 1832.502-470, insert the following clause:

**SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS (MAR 1989)**

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

**1852.233-70 Protests to NASA.**

As prescribed in 1833.106-70, insert the following provision:

**PROTESTS TO NASA (DEC 2015)**

(a) In lieu of a protest to the United States Government Accountability Office (GAO), bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33) directly to the Contracting Officer for consideration by the Agency. Alternatively, bidders or offerors may request an independent review by the Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Such reviews are separate and distinct from the Ombudsman Program described at 1815.7001.

(b) Bidders or offerors shall specify whether they are submitting a protest to the Contracting Officer or requesting an independent review by the Assistant Administrator for Procurement.

(c) Protests to the Contracting Officer shall be submitted to the address or email specified in the solicitation (email is an acceptable means for submitting a protest to the Contracting Officer). Alternatively, requests for independent review by the Assistant Administrator for Procurement shall be addressed to the Assistant Administrator for Procurement, NASA Headquarters, Washington, DC 20546-0001.

(End of provision)

[80 FR 36723, June 26, 2015, as amended at 80 FR 75843, Dec. 4, 2015]

**1852.234-1 Notice of Earned Value Management System.**

As prescribed in 1834.203-70(a), insert the following provision:

## National Aeronautics and Space Administration

1852.234-2

### NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 Standard, Earned Value Management Systems (current version at time of solicitation).

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines in ANSI/EIA-748;

(iii) 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;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Describe how the offeror will ensure EVMS compliance for each subcontractor subject to the flowdown requirement in paragraph (c) whose EVMS has not been recognized by the Cognizant Federal Agency as compliant according to paragraph (a);

(vi) Provide documentation describing the process and results, including Government participation, of any third-party or self-evaluation of the system's compliance with the EVMS guidelines; and

(vii) If the value of the offeror's proposal, including options, is \$50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. 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/programs/systemcommittee.aspx>).

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's EVMS implementation plan prior to contract award.

(c) The offeror shall identify in its offer the major subcontractors, or major subcontracted effort if major subcontractors have

not been selected, planned for application of the EVMS requirement. Prior to contract award, the offeror and NASA shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision.

(End of provision)

[71 FR 66121, Nov. 13, 2006, as amended at 80 FR 12953, Mar. 12, 2015]

### 1852.234-2 Earned Value Management System.

As prescribed in 1834.203-70(b) insert the following clause:

#### EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that has been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines specified in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 Standard, Industry Guidelines for Earned Value Management Systems (current version at the time of award) to manage this contract; and

(2) Earned Value Management (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.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing EVMS that is compliant with the guidelines in the ANSI/EIA-748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance/validation. The Contractor shall follow and implement the approved compliance/validation plan in a timely fashion. The Government will conduct a Compliance Review to assess the contractor's compliance with its plan, and if the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies identified as a result of the compliance review within a reasonable time, the Contracting Officer may take remedial action, that may include, but is not limited to, a reduction in fee.

(c) The Government will conduct Integrated Baseline Reviews (IBRs). Such reviews shall be scheduled and conducted as early as practicable, and if a pre-award IBR has not been conducted, a post-award IBR should be conducted within 180 calendar days after contract award, or the exercise of significant contract options, or within 60 calendar days after distribution of a supplemental agreement that implements a significant funding realignment or effects a significant change in contractual requirements (e.g., incorporation of major modifications). The objective of IBRs is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. See the NASA IBR Handbook (<http://evm.nasa.gov/handbooks.html>) for guidance.

(d) Unless a waiver is granted by the Cognizant Federal Agency, Contractor proposed EVMS changes require approval of the Cognizant Federal Agency prior to implementation. The Cognizant Federal Agency shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the Cognizant Federal Agency, the Contractor shall disclose EVMS changes to the Cognizant Federal Agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the Contractor's EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause, and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR required by the contract through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall be responsible for ensuring that its subcontractors, identified below, comply with the EVMS requirements of this clause as follows:

(1) For subcontracts with an estimated dollar value of \$50M or more, the following subcontractors shall comply with the requirements of this clause.

(Contracting Officer to insert names of subcontractors or subcontracted effort).

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(2) For subcontracts with an estimated dollar value of less than \$50M, the following subcontractors shall comply with the requirements of this clause except for the requirement in paragraph (b), if applicable, to obtain compliance/validation.

(Contracting Officer to insert names of subcontractors or subcontracted effort.)

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(g) If the contractor identifies a need to deviate from the agreed baseline by working against an Over Target Baseline (OTB) or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer a request for approval to begin implementation of an OTB or OTS. This request shall include a top-level projection of cost and/or schedule growth, whether or not performance variances will be retained, and a schedule of implementation for the reprogramming adjustment. The Government will approve or deny the request within 30 calendar days after receipt of the request. Failure of the Government to respond within this 30-day period constitutes approval of the request. Approval of the deviation request does not constitute a change, or the basis for a change, to the negotiated cost or price of this contract, or the estimated cost of any undefinitized contract actions.

(End of clause)

*Alternate I* (NOV 2006). As prescribed in 1834.203-70(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA-748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to be compliant with the guidelines. The Government will not formally validate/accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts. The Government will monitor compliance through routine surveillance.

[71 FR 66121, Nov. 13, 2006, as amended at 80 FR 12953, Mar. 12, 2015]

**National Aeronautics and Space Administration**

**1852.235-72**

**1852.235-70 Center for AeroSpace Information.**

As prescribed in 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION (DEC 2006)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (<http://www.sti.nasa.gov>) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a NASA repository and database of research information, which may enhance contract performance.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) Information regarding CASI and the services available can be obtained at the Internet address contained in paragraph (a) of this clause.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 71 FR 71073, Dec. 8, 2006]

**1852.235-71 Key personnel and facilities.**

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided*, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to

time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

**1852.235-72 Instructions for responding to NASA Research Announcements.**

As prescribed in 1835.070(c), insert the following provision:

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (JUL 2016)

(a) *General.* (1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate award instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. A grant, cooperative agreement, or other agreement resulting from NRAs are subject to policies and procedures outlined in the Guidebook for Proposers Responding to a NASA Funding Announcement, 2 CFR part 1800, 14 CFR part 1274, or other agreement policy. Any proposal from a large business concern that may result in the award of a contract, which exceeds \$5,000,000 and has subcontracting possibilities should include a small business subcontracting plan in accordance with the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(Subcontract plans for contract awards below \$5,000,000, will be negotiated after selection.)

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) *NRA-Specific Items.* Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) *Transmittal letter or prefatory material.* (i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, non-profit, educational, small business, minority, women-owned, etc.;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) *Restriction on use and disclosure of proposal information.* Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to

maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

NOTICE—RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL INFORMATION

The information (data) contained in [*insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(3) *Abstract.* Include a concise (200-300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) *Project description.* (i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) *Management approach.* For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and



arrangements for ensuring a coordinated effort should be described.

(6) *Personnel.* The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) *Facilities and equipment.* (i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

(8) *Proposed costs (U.S. proposals only).* (i) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and esti-

mated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR part 31 and the NASA FAR Supplement part 1831.

(iv) Use of NASA funds—NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(9) *Security.* Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) *Current support.* For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) *Special matters.* (i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Identify and discuss risk factors and issues throughout the proposal where they are relevant, and your approach to managing these risks.

(iii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) *Renewal proposals.* (1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) *Length.* Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15-20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments.

(f) *Joint proposals.* (1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) *Late proposals.* Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.

(h) *Withdrawal.* Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) *Evaluation factors.* (1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique com-

binations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) *Evaluation techniques.* Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) *Selection for award.* (1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) *Additional guidelines applicable to foreign proposals and proposals including foreign participation.* (1) NASA welcomes proposals from outside the U.S. However, foreign entities are generally not eligible for funding from NASA. Therefore, unless otherwise noted in the NRA, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included. Proposals from foreign entities and proposals from U.S. entities that include foreign participation must be endorsed by the respective government agency or funding/sponsoring institution in the country from which the foreign entity is proposing. Such endorsement should indicate that the proposal merits careful consideration by NASA.

and if the proposal is selected, sufficient funds will be made available to undertake the activity as proposed.

(2) All foreign proposals must be type-written in English and comply with all other submission requirements stated in the NRA. All foreign proposals will undergo the same evaluation and selection process as those originating in the U.S. All proposals must be received before the established closing date. Those received after the closing date will be treated in accordance with paragraph (g) of this provision. Sponsoring foreign government agencies or funding institutions may, in exceptional situations, forward a proposal without endorsement if endorsement is not possible before the announced closing date. In such cases, the NASA sponsoring office should be advised when a decision on endorsement can be expected.

(3) Successful and unsuccessful foreign entities will be contacted directly by the NASA sponsoring office. Copies of these letters will be sent to the foreign sponsor. Should a foreign proposal or a U.S. proposal with foreign participation be selected, NASA's Office of External Relations will arrange with the foreign sponsor for the proposed participation on a no-exchange-of-funds basis, in which NASA and the non-U.S. sponsoring agency or funding institution will each bear the cost of discharging their respective responsibilities.

(4) Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(i) An exchange of letters between NASA and the foreign sponsor; or

(ii) A formal Agency-to-Agency Memorandum of Understanding (MOU).

(m) *Cancellation of NRA.* NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for canceling the NRA or for anyone's failure to receive actual notice of cancellation.

[62 FR 4475, Jan. 30, 1997, as amended at 64 FR 48561, Sept. 7, 1999; 65 FR 3153, Jan. 20, 2000; 67 FR 30604, May 7, 2002; 67 FR 61520, Oct. 1, 2002; 69 FR 63460, Nov. 2, 2004; 70 FR 74207, Dec. 15, 2005; 81 FR 41238, June 24, 2016]

#### **1852.235-73 Final Scientific and Technical Reports.**

As prescribed in 1835.070(d) insert the following clause:

##### FINAL SCIENTIFIC AND TECHNICAL REPORTS (DEC 2006)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photo-

graphs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPR 2200.2, Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. Electronic formats for submission of reports should be used to the maximum extent practical. Before electronically submitting reports containing scientific and technical information (STI) that is export-controlled or limited or restricted, contact the Contracting Officer to determine the requirements to electronically transmit these forms of STI. If appropriate electronic safeguards are not available at the time of submission, a paper copy or a CD-ROM of the report shall be required. Information regarding appropriate electronic formats for final reports is available at <http://www.sti.nasa.gov> under "Publish STI—Electronic File Formats."

(c) The last page of the final report shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) In addition to the final report submitted to the Contracting Officer, the Contractor shall concurrently provide to the Center STI/Publication Manager and the NASA Center for AeroSpace Information (CASI) a copy of the letter transmitting the final report to the Contracting Officer. The copy of the letter shall be submitted to CASI at the address listed at <http://www.sti.nasa.gov> under the "Get Help" link.

(e) In accordance with paragraph (d) of the Rights in Data—General clause (52.227-14) of this contract, the Contractor may publish, or otherwise disseminate, data produced during the reports required by 1852.235-74 when included in the contract, without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. Should the Contractor seek to publish or otherwise disseminate the final report, or any additional reports required by 1852.235-74 if applicable, as delivered to NASA under this contract, the Contractor may do so once NASA has completed its document availability authorization review, and availability of the report has been determined.

*Alternate I* (FEB 2003) As prescribed by 1835.070(d)(1), insert the following as paragraph (e) of the basic clause:

(e) The data resulting from this research activity is “fundamental research” which will be broadly shared within the scientific community. No foreign national access or dissemination restrictions apply to this research activity. The Contractor may publish, release, or otherwise disseminate data produced during the performance of this contract, including the final report, without prior review by NASA for export control or national security purposes. However, NASA retains the right to review the final report to ensure that proprietary information, which may have been provided to the Contractor, is not released without authorization and for consistency with NASA publication standards. Additionally, the Contractor is responsible for reviewing any publication, release, or dissemination of the data for conformance with other restrictions expressly set forth in this contract, and to the extent it receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for compliance with such restrictive markings.

*Alternate II* (DEC 2005) As prescribed by 1835.070(d)(2), insert the following as paragraph (e) of the basic clause:

(e) Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; or, to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor shall not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report and any additional reports required by 1852.235-74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined.

(f) All publications of any material based on or developed under NASA sponsored projects shall include an acknowledgement similar to the following:

“The material is based upon work supported by the National Aeronautics and Space Administration under Contract Number XXXX.”

Except for articles or papers published in scientific, technical or professional journals, the exposition of results from NASA supported research shall also include the following disclaimer:

“Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration.”

*Alternate III* (JAN 2005) As prescribed by 1835.070(d)(3), insert the following as paragraph (e) of the basic clause:

(e) The Contractor’s rights in data are defined in FAR 52.227-20, Rights In Data—SBIR Program. The Contractor may publish, or otherwise disseminate, such data without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. In the event the Contractor has established its claim to copyright data produced under this contract and has affixed a copyright notice and acknowledgement of Government sponsorship, or has affixed the SBIR Rights Notice contained in paragraph (d) of FAR 52.227-20, the Government shall comply with such Notices.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 70 FR 2022, Jan. 12, 2005; 70 FR 74207, Dec. 15, 2005; 71 FR 71073, Dec. 8, 2006; 81 FR 10520, Mar. 1, 2016]

#### **1852.235-74 Additional Reports of Work—Research and Development.**

As prescribed in 1835.070(e), insert a clause substantially the same as the following:

##### **ADDITIONAL REPORTS OF WORK—RESEARCH AND DEVELOPMENT (FEB 2003)**

In addition to the final report required under this contract, the Contractor shall submit the following report(s) to the Contracting Officer:

(a) *Monthly progress reports.* The Contractor shall submit separate monthly reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(c) *Submission dates.* Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within \_\_\_ days after the completion of the effort under the contract.

(End of clause)

[68 FR 5232, Feb. 3, 2003]

**1852.236-71 Additive or deductive items.**

As prescribed in 1836.570(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of \$100,000, a bidder's base bid of \$85,000, and four successive additives of \$10,000, \$8,000, \$6,000, and \$4,000. In this example, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed \$100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items.

The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

**1852.236-72 Bids with unit prices.**

As prescribed in 1836.570(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

**1852.236-73 Hurricane plan.**

As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

**1852.236-74**

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

**1852.236-74 Magnitude of requirement.**

As prescribed in 1836.570(d), insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between \$\_\_\_\_\_ and \$\_\_\_\_\_. [Insert the estimated dollar range.]

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

**1852.236-75 Partnering for construction contracts.**

As prescribed in 1836.7004, insert the following clause:

PARTNERING FOR CONSTRUCTION CONTRACTS  
(AUG 1998)

(a) The terms "partnering" and "partnership" used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically through-

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out the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[63 FR 44171, Aug. 18, 1998]

**1852.237-70 Emergency evacuation procedures.**

As prescribed at 1837.110-70(a), insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989; 62 FR 4476, Jan. 30, 1997]

**1852.237-71 Pension portability.**

As prescribed at 1837.110-70(b), insert the following clause:

PENSION PORTABILITY (JAN 1997)

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed \$2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

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

(End of clause)

[62 FR 4477, Jan. 30, 1997]

**1852.237-72 Access to Sensitive Information.**

As prescribed in 1837.203-72(a), insert the following clause:

**ACCESS TO SENSITIVE INFORMATION (JUN 2005)**

(a) As used in this clause, "sensitive information" refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the Contractor agrees to—

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the Contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the Contractor for serious misconduct affecting present responsibility as a government contractor.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information.

(End of clause)

[80 FR 43032, July 21, 2015, as amended at 80 FR 61994, Oct. 15, 2015]

**1852.237-73 Release of Sensitive Information.**

As prescribed in 1837.203-72(b), insert the following clause:

**RELEASE OF SENSITIVE INFORMATION (JUN 2005)**

(a) As used in this clause, "sensitive information" refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following: Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237-72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safe-

guards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service



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provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

[80 FR 43032, July 21, 2015, as amended at 80 FR 61994, Oct. 15, 2015]

**1852.239-70 Alternate delivery points.**

As prescribed in 1839.107-70(a)(1), insert the following clause:

ALTERNATE DELIVERY POINTS (NOV 1993)

(a) The first priority of this contract is to satisfy the anticipated requirements of \_\_\_\_ (identify contracting activity). However, should the actual requirements of \_\_\_\_ (contracting activity) be less than the maximum quantities/values specified in section B of this contract, \_\_\_\_ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List installations and their locations)

(b) The prices of the deliverables in section B are F.O.B. destination to \_\_\_\_ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

*Alternate I* (NOV 1993). As prescribed in 1839.107-70(a)(2), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[58 FR 59189, Nov. 8, 1993; 58 FR 62556, Nov. 29, 1993, as amended at 62 FR 4477, Jan. 30, 1997; 62 FR 36735, July 9, 1997; 81 FR 24501, Apr. 26, 2016]

**1852.241-70 [Reserved]**

**1852.242-71 Travel outside of the United States.**

As prescribed in 1842.7002, insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 56 FR 12460, Mar. 26, 1991]

**1852.242-72 Denied Access to NASA Facilities.**

As prescribed in 1842.7001, insert the following clause:

DENIED ACCESS TO NASA FACILITIES (OCT 2015)

(a)(1) The performance of this contract requires contractor employees of the prime contractor or any subcontractor, affiliate, partner, joint venture, or team member with which the contractor is associated, including consultants engaged by any of these entities, to have access to, physical entry into, and to the extent authorized, mobility within, a NASA facility.

(2) NASA may close and or deny contractor access to a NASA facility for a portion of a business day or longer due to any one of the following events:

(i) Federal public holidays for federal employees in accordance with 5 U.S.C. 6103.

(ii) Fires, floods, earthquakes, unusually severe weather to include snow storms, tornadoes and hurricanes.

(iii) Occupational safety or health hazards.

(iv) Non-appropriation of funds by Congress.

(v) Any other reason.

(3) In such events, the contractor employees may be denied access to a NASA facility, in part or in whole, to perform work required

by the contract. Contractor personnel already present at a NASA facility during such events may be required to leave the facility.

(b) In all instances where contractor employees are denied access or required to vacate a NASA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, which could include continuing on-site performance during the NASA facility closure period. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, that the NASA facility is accessible. Once accessible the contractor shall resume contract performance as required by the contract.

(d) For the period that NASA facilities were not accessible to contractor employees, the contracting officer may—

- (1) Adjust the contract performance or delivery schedule for a period equivalent to the period the NASA facility was not accessible;
- (2) Forego the work;
- (3) Reschedule the work by mutual agreement of the parties; or

(4) Consider properly documented requests for equitable adjustment, claim, or any other remedy pursuant to the terms and conditions of the contract.

(e) Notification procedures of a NASA facility closure, including contractor denial of access, as follows:

(1) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, for announcement of a NASA facility closure to include denial of access to the NASA facility. The contractor shall be responsible for notification of its employees of the NASA facility closure to include denial of access to the NASA facility. The dismissal of NASA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NASA facility closure in which contractor employees are denied access. Moreover, the leave status of NASA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NASA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.

(2) NASA's Emergency Notification System (ENS). ENS is a NASA-wide Emergency

Notification and Accountability System that provides NASA the ability to send messages, both Agency-related and/or Center-related, in the event of an emergency or emerging situation at a NASA facility. Notification is provided via multiple communication devices, *e.g.* Email, text, cellular, home/office numbers. The ENS provides the capability to respond to notifications and provide the safety status. Contractor employees may register for these notifications at the ENS Web site: <http://www.hq.nasa.gov/office/ops/nasaonly/ENSinformation.html>.

(End of clause)

[80 FR 52644, Sept. 1, 2015]

**1852.242-73 NASA contractor financial management reporting.**

As prescribed in 1842.7202, insert the following clause:

**NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (NOV 2004)**

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Procedures and Guidelines (NPR) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in

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accordance with the Changes clause of this contract.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 65 FR 46628, July 31, 2000; 69 FR 63460, Nov. 2, 2004]

**1852.242-78 Emergency Medical Services and Evacuation.**

As prescribed in 1842.7003, insert the following clause:

**EMERGENCY MEDICAL SERVICES AND EVACUATION (APR 2001)**

The Contractor shall, at its own expense, be responsible for making all arrangements for emergency medical services and evacuation, if required, for its employees while performing work under this contract outside the United States or in remote locations in the United States. If necessary to deal with certain emergencies, the Contractor may request the Government to provide medical or evacuation services. If the Government provides such services, the Contractor shall reimburse the Government for the costs incurred.

(End of clause)

[66 FR 18054, Apr. 5, 2001]

**1852.243-70—1852.243-71 [Reserved]**

**1852.243-72 Equitable adjustments.**

As prescribed in 1843.205-70, insert the following clause.

**EQUITABLE ADJUSTMENTS (APR 1998)**

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the "Suspension of Work" clause (FAR 52.242-14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces .....	—	—	10
To first tier subcontractor on work performed by its subcontractors .....	—	—	10
To Contractor and/or subcontractors on work performed with their own forces .....	10	10	—

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in di-

rect costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

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(End of clause)

[63 FR 17339, Apr. 9, 1998, as amended at 81 FR 75345, Oct. 31, 2016]

**1852.243-73—1852.243-78 [Reserved]**

**1852.244-70 Geographic participation in the aerospace program.**

As prescribed in 1844.204-70, insert the following clause:

**GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)**

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of \$100,000 and over.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14034, Mar. 25, 1997]

**1852.245-70 Contractor requests for Government-furnished property.**

As prescribed in 1845.107-70(a)(1), insert the following clause:

**CONTRACTOR REQUESTS FOR GOVERNMENT-FURNISHED PROPERTY (AUG 2015)**

(a) The Contractor shall provide all property required for the performance of this contract. The Contractor shall not acquire or construct items of property to which the Government will have title under the provisions of this contract without the Contracting Officer's written authorization. Property which will be acquired as a deliverable end item as material or as a component for incorporation into a deliverable end item is exempt from this requirement. Property approved as part of the contract award or specifically required within the statement of work is exempt from this requirement.

(b)(1) In the event the Contractor is unable to provide the property necessary for performance, and the Contractor requests provision of property by the Government, the Contractor's request shall—

(i) Justify the need for the property;

(ii) Provide the reasons why contractor-owned property cannot be used;

(iii) Describe the property in sufficient detail to enable the Government to screen its inventories for available property or to otherwise acquire property, including applicable manufacturer, model, part, catalog, National Stock Number or other pertinent identifiers;

(iv) Combine requests for quantities of items with identical descriptions and estimated values when the estimated values do not exceed \$500,000 per unit; and

(v) Include only a single unit when the acquisition or construction value equals or exceeds \$500,000.

(2) Contracting Officer authorization is required for items the Contractor intends to manufacture as well as those it intends to purchase.

(3) The Contractor shall submit requests to the Contracting Officer no less than 30 days in advance of the date the Contractor would, should it receive authorization, acquire or begin fabrication of the item.

(c) The Contractor shall maintain copies of Contracting Officer authorizations, appropriately cross-referenced to the individual property record, within its property management system.

(d) Property furnished from Government excess sources is provided as-is, where-is. The Government makes no warranty regarding its applicability for performance of the contract or its ability to operate. Failure of property obtained from Government excess sources under this clause is insufficient reason for submission of requests for equitable adjustments discussed in the clause at FAR 52.245-1, Government Property, as incorporated in this contract.

(End of clause)

*Alternate I (AUG 2015)* As prescribed in 1845.107-70(a)(2), add the following paragraph (e).

(e) In the event the Contracting Officer issues written authorization to provide property, the Contractor shall screen Government sources to determine the availability of property from Government inventory or excess property.

(1) The Contractor shall review NASA inventories and other authorized Federal excess sources for availability of items that meet the performance requirements of the requested property.

(i) If the Contractor determines that a suitable item is available from NASA supply inventory, it shall request the item using applicable Center procedures.

(ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer to arrange for transfer of the item from the identified source to the Contractor.

(2) If the Contractor determines that the required property is not available from inventory or excess sources, the Contractor shall note the acquisition file with a list of sources reviewed and the findings regarding the lack of availability. If the required property is available, but unsuitable for use, the contractor shall document the rationale for rejection of available property. The Contractor shall retain appropriate cross-referenced documentary evidence of the outcome of those screening efforts as part of its property records system.

[76 FR 2006, Jan. 12, 2011, as amended at 80 FR 51959, Aug. 27, 2015; 81 FR 13747, Mar. 15, 2016; 81 FR 14739, Mar. 18, 2016]

**1852.245-71 Installation-accountable Government property.**

As prescribed in 1845.107-70(b)(1), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY (JUN 2018)

(a) The Government property described in paragraph (c) of this clause may be made available to the Contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property unless authorized by the Contracting Officer under (b)(1)(iv). Under this clause, the Government retains accountability for, and title to, the property, and the Contractor shall comply with the following:

NASA Procedural Requirements (NPR) 4100.1, NASA Materials Inventory Management Manual;

NASA Procedural Requirements (NPR) 4200.1, NASA Equipment Management Procedural Requirements;

NASA Procedural Requirement (NPR) 4300.1, NASA Personal Property Disposal Procedural Requirements;

[Insert any additional property management responsibilities.]

Property not recorded in NASA property systems must be managed in accordance with the requirements of the clause at FAR 52.245-1, as incorporated in this contract.

The Contractor shall establish and adhere to a system of written procedures to assure continued, effective management control and compliance with these user responsibilities. In accordance with FAR 52.245-1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause.

(b)(1) The official accountable record-keeping, financial control, and reporting of the property subject to this clause shall be

retained by the Government and accomplished within NASA management information systems prescribed by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the Contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The Contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area.

(ii) The Contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area.

(iii) The Contractor shall establish a record for Government titled property as required by FAR 52.245-1, as incorporated in this contract, and shall maintain that record until accountability is accepted by the Government.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use requires advance approval of the Contracting Officer and notification of the Industrial Property Officer. The property shall be considered Government furnished and the Contractor shall assume accountability and financial reporting responsibility. The Contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR 52.245-1, Government Property (as incorporated in this contract), until its return to the installation. NASA Procedural Requirements related to property loans shall not apply to offsite use of property by contractors.

(2) After transfer of accountability to the Government, the Contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) of this clause and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the Contracting Officer.

(c) The following property and services are provided if checked:

(1) Office space, work area space, and utilities. Government telephones are available for official purposes only.

(2) Office furniture.

(3) Property listed in [Insert attachment number or "not applicable" if no equipment is provided].

(i) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records.

(ii) The Contractor shall not bring to the installation for use under this contract any

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property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

- (4) Supplies from stores stock.
- (5) Publications and blank forms stocked by the installation.
- (6) Safety and fire protection for Contractor personnel and facilities.
- (7) Installation service facilities: [Insert the name of the facilities or "none"].
- (8) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.
- (9) Cafeteria privileges for Contractor employees during normal operating hours.
- (10) Building maintenance for facilities occupied by Contractor personnel.
- (11) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services may be provided on-site, as approved by the Contracting Officer.

(End of clause)

*Alternate I* (JAN 2011) As prescribed in 1845.107-70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

- (i) The Contractor shall not utilize the installation's central receiving facility for receipt of contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a monthly basis, to the SEMO.

[76 FR 2006, Jan. 12, 2011, as amended at 83 FR 28386, June 19, 2018]

**1852.245-72 Liability for Government property furnished for repair or other services.**

As prescribed in 1845.107-70(c), insert the following clause:

**LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (JAN 2011)**

- (a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to FAR 52.245-1, Government Property.
- (b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily

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accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

- (c) The Contractor shall be liable for any loss, damage, or destruction of the Government property furnished for servicing when caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances. The Contractor shall not be liable for loss, damage, or destruction of Government property furnished for servicing resulting from any other cause except to the extent that the loss, damage, or destruction is covered by insurance (including self-insurance funds or reserves).

- (d) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

**1852.245-73 Financial reporting of NASA property in the custody of contractors.**

As prescribed in 1845.107-70(d), insert the following clause:

**FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2017)**

- (a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.
- (b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.
- (2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Industrial Property Officer and a copy to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.
- (3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following

address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31st. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31st.

(2) Some activity may be estimated for the month in which the report is submitted, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533) Contractor Financial Management Report cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(3) In addition to an annual report, if at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of \$10 million or more, the contractor shall also submit a report no later than the 21st of each month in accordance with the requirements of paragraph (c)(2) of this clause.

(4) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly report in accordance with (c)(3) of this clause, and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Con-

tracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 81 FR 24501, Apr. 26, 2016; 81 FR 91047, Dec. 16, 2016]

#### **1852.245-74 Identification and marking of Government equipment.**

As prescribed by 1845.107-70(e), insert the following clause.

##### IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA-HDBK) 6003, Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques, and NASA Standard (NASA-STD) 6002, Applying Data Matrix Identification Symbols on Aerospace Parts or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property; and, (2) contain the data and data format required by the standards. This requirement includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.

(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

- (1) Item Description.
- (2) Unique Identification Number (License Tag).
- (3) Unit Price.
- (4) An explanation of the data used to make the unique identification number.

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(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

- (1) Date originally placed in service.
- (2) Item condition.

(e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the NASA center receiving activity listed below:

\_\_\_\_\_  
\_\_\_\_\_

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

**1852.245-75 Property management changes.**

As prescribed in 1845.107-70(f), insert the following clause.

PROPERTY MANAGEMENT CHANGES (JAN 2011)

(a) The Contractor shall submit any changes to standards and practices used for management and control of Government property under this contract to the assigned property administrator prior to making the change whenever the change—

- (1) Employs a standard that allows increase in thresholds or changes the timing for reporting loss, damage, or destruction of property;
- (2) Alters physical inventory timing or procedures;
- (3) Alters recordkeeping practices;
- (4) Alters practices for recording the transport or delivery of Government property; or
- (5) Alters practices for disposition of Government property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

**1852.245-76 List of Government property furnished pursuant to FAR 52.245-1.**

As prescribed in 1845.107-70(g), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245-1 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment [Insert attachment number or “not applicable”] of this contract on a no charge-for-use basis pursuant to the clause at FAR 52.245-1, Government Property, as in-

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corporated in this contract. The Contractor shall use this property in the performance of this contract at [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under FAR 52.245-1, the Contractor is accountable for the identified property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

**1852.245-77 List of Government property furnished pursuant to FAR 52.245-2.**

As prescribed in 1845.107-70(h), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245-2 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment \_\_\_\_ [Insert attachment number or “not applicable”] of this contract on a nocharge-for-use basis pursuant to FAR 52.245-2, Government Property Installation Operation Services, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at \_\_\_\_ [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer.

[Insert a description of the item(s), acquisition date, quantity, acquisition cost, and applicable equipment information]

(End of clause)

[76 FR 2006, Jan. 12, 2011]

**1852.245-78 Physical inventory of capital personal property.**

As prescribed in 1845.107-70(i), insert the following clause.

PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (AUG 2015)

(a) In addition to physical inventory requirements under the clause at FAR 52.245-1, Government Property, as incorporated in this contract, the Contractor shall conduct annual physical inventories for individual property items with an acquisition cost exceeding \$500,000.

- (1) The Contractor shall inventory—
  - (i) Items of property furnished by the Government;
  - (ii) Items acquired by the Contractor and titled to the Government under the clause at FAR 52.245-1;



(iii) Items constructed by the Contractor and not included in the deliverable, but titled to the Government under the clause at FAR 52.245-1; and

(iv) Complete but undelivered deliverables.

(2) The Contractor shall use the physical inventory results to validate the property record data, specifically location and use status, and to prepare summary reports of inventory as described in paragraph (c) of this clause.

(b) Unless specifically authorized in writing by the Property Administrator, the inventory shall be performed and posted by individuals other than those assigned custody of the items, responsibility for maintenance, or responsibility for posting to the property record. The Contractor may request a waiver from this separation of duties requirement from the Property Administrator, when all of the conditions in either (1) or (2) of this paragraph are met.

(1) The Contractor utilizes an electronic system for property identification, such as a laser bar-code reader or radio frequency identification reader, and

(i) The programs or software preclude manual data entry of inventory identification data by the individual performing the inventory; and

(ii) The inventory and property management systems contain sufficient management controls to prevent tampering and assure proper posting of collected inventory data.

(2) The Contractor has limited quantities of property, limited personnel, or limited property systems; and the Contractor provides written confirmation that the Government property exists in the recorded condition and location;

(3) The Contractor shall submit the request to the cognizant property administrator and obtain approval from the property administrator prior to implementation of the practice.

(c) The Contractor shall report the results of the physical inventory to the property administrator within 10 calendar days of completion of the physical inventory. The report shall—

(1) Provide a summary showing number and value of items inventoried; and

(2) Include additional supporting reports of—

(i) Loss in accordance with the clause at 52.245-1, Government Property;

(ii) Idle property available for reuse or disposition; and

(iii) A summary of adjustments made to location, condition, status, or user as a result of the physical inventory reconciliation.

(d) The Contractor shall retain auditable physical inventory records, including records supporting transactions associated with inventory reconciliation. All records shall be subject to Government review and/or audit.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 80 FR 51959, Aug. 27, 2015]

**1852.245-79 Records and disposition reports for Government property with potential historic or significant real value.**

As prescribed in 1845.107-70(j), insert the following clause.

RECORDS AND DISPOSITION REPORTS FOR GOVERNMENT PROPERTY WITH POTENTIAL HISTORIC OR SIGNIFICANT REAL VALUE (JAN 2011)

(a) In addition to the property record data required by the clause at FAR 52.245-1, Government Property as incorporated in this contract, Contractor records of all Government property under this contract shall—

(1) Identify the projects or missions that used the items;

(2) Specifically identify items of flown property;

(3) When known, associate individual items of property used in space flight operations with the using astronaut(s); and

(4) Identify property used in test activity and, when known, the individuals who conducted the test.

(b) The Contractor shall include this information within item descriptions—

(1) On any Standard Form 1428, Inventory Schedule;

(2) In automated disposition systems;

(3) In any other disposition related reports; and

(4) In other requests for disposition instructions.

(c) The Contractor shall not remove NASA identification or markings from Government property prior to or during disposition without the advanced written approval of the Plant Clearance Officer.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

**1852.245-80 Government property management information.**

As prescribed in 1845.107-70(k)(1), insert the following provision.

GOVERNMENT PROPERTY MANAGEMENT INFORMATION (JAN 2011)

(a) The offeror shall identify the industry leading or voluntary consensus standards, and/or the industry leading practices, that it intends to employ for the management of Government property under any contract awarded from this solicitation.

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(b) The offeror shall provide the date of its last Government property control system analysis along with its overall status, a summary of findings and recommendations, the status of any recommended corrective actions, the name of the Government activity that performed the analysis, and the latest available contact information for that activity.

(c) The offeror shall identify any property it intends to use in performance of this contract from the list of available Government property in the provision at 1852.245-81, List of Available Government Property.

(d) The offeror shall identify all Government property in its possession, provided under other Government contracts that it intends to use in the performance of this contract. The offeror shall also identify: The contract that provided the property, the responsible Contracting Officer, the dates during which the property will be available for use (including the first, last, and all intervening months), and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support prorating the rent, the amount of rent that would otherwise be charged in accordance with FAR 52.245-9, Use and Charges (June 2007), and the contact information for the responsible Government Contracting Officer. The offeror shall provide proof that such use was authorized by the responsible Contracting Officer.

(e) The offeror shall disclose cost accounting practices that allow for direct charging of commercially available equipment, when commercially available equipment is to be used in performance of the contract and the equipment is not a deliverable.

(f) The offeror shall identify, in list form, any equipment that it intends to acquire and directly charge to the Government under this contract. The list shall include a description, manufacturer, model number (when available), quantity required, and estimated unit cost. Equipment approved as part of the award need not be requested under NFS clause 1852.245-70.

(g) The offeror shall disclose its intention to acquire any parts, supplies, materials or equipment, to fabricate an item of equipment for use under any contract resulting from this solicitation when that item of equipment:

Will be titled to the government under the provisions of the contract; is not included as a contract deliverable; and the Contractor intends to charge the costs of materials directly to the contract. The disclosure shall identify the end item or system and shall include all descriptive information, identification numbers (when available), quantities required and estimated costs.

(h) Existing Government property may be reviewed at the following locations, dates,

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and times: [Enter the appropriate information]

(End of provision)

*Alternate 1* (JAN 2011) As prescribed in 1845.107-70(k)(2) add the following paragraph (i).

(i) Existing available Government property listed in the provision at 1852.245-81 is provided "as-is." NASA makes no warranty regarding its performance or condition. The offeror uses this property at its own risk and should make its own assessment of the property's suitability for use. The equitable adjustment provisions of the clause at 52.245-1, Government Property as included in this solicitation, are not applicable to this property. The offeror must obtain the Contracting Officer's written approval before acquiring replacement property when it intends to charge the cost directly to the contract.

[76 FR 2006, Jan. 12, 2011]

**1852.245-81 List of available Government property.**

As prescribed in 1845.107-70(l), insert the following provision.

**LIST OF AVAILABLE GOVERNMENT PROPERTY  
(JAN 2011)**

(a) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245-1, Government Property, included in this solicitation. The offeror shall notify the Government, as part of its proposal, of its intention to use or not use the property.

(b) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245-2, Government Property Installation Operation Services, as included in this solicitation. The offeror shall notify the Government of its intention to use or not use the property.

(c) The selected Contractor will be responsible for costs associated with transportation, and installation of the property listed in this provision.

(End of provision)

[76 FR 2006, Jan. 12, 2011]

**1852.245-82 Occupancy management requirements.**

As prescribed in 1845.107-70(m), insert the following clause:

National Aeronautics and Space Administration

1852.246-71

OCCUPANCY MANAGEMENT REQUIREMENTS (SEP 2017)

(a) In addition to the requirements of the clause at FAR 52.245-1, Government Property, as included in this contract, the Contractor shall comply with the following in performance of work in and around Government real property:

(1) NPD 8800.14, Policy for Real Estate Management.

(2) NPD 8831.2, Facilities Maintenance and Operations Management.

[Insert any additional Center occupancy requirements here]

(b) The Contractor shall obtain the written approval of the Contracting Officer before installing or removing Contractor-owned property onto or into any Government real property or when movement of Contractor-owned property may damage or destroy Government-owned property. The Contractor shall restore damaged property to its original condition at the Contractor's expense.

(c) The Contractor shall not acquire, construct or install any fixed improvement or structural alterations in Government buildings or other real property without the advance, written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. Title to such property shall vest in the Government.

(d) The Contractor shall report any real property or any portion thereof when it is no longer required for performance under the contract, as directed by the Contracting Officer.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 81 FR 24501, Apr. 26, 2016; 82 FR 38853, Aug. 16, 2017]

1852.245-83 Real property management requirements.

As prescribed in 1845.107-70(n), insert the following clause:

REAL PROPERTY MANAGEMENT REQUIREMENTS (JAN 2011)

(a) In addition to the requirements of the FAR Government Property Clause incorporated in this contract (FAR 52.245-1), the Contractor shall comply with the following in performance of any maintenance, construction, modification, demolition, or management activities of any Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any real property related Center requirements here]

(b) Within 30 calendar days following award, the Contractor shall provide a plan for maintenance of Government real property provided for use under this contract. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Contracting Officer the need for replacement and/or capital rehabilitation. Upon acceptance by the Contracting Officer, the program shall become a requirement under this contract.

(c) Title to parts replaced by the Contractor in carrying out its normal maintenance obligations shall pass to and vest in the Government upon completion of their installation in the facilities. The Contractor shall keep the property free and clear of all liens and encumbrances.

(d) The Contractor shall keep records of all work done to real property, including plans, drawings, charts, warranties, and manuals. Records shall be complete and current. Record of all transactions shall be auditable. The Government shall have access to these records at all reasonable times, for the purposes of reviewing, inspecting, and evaluating the Contractor's real property management effectiveness. When real property is disposed of under this contract, the Contractor shall deliver the related records to the Government.

(e) The Contracting Officer may direct the Contractor in writing to reduce the work required by the maintenance program authorized in paragraph (b) of this clause at any time.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 81 FR 24501, Apr. 26, 2016]

1852.246-70 [Reserved]

1852.246-71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Function	Location
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[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990; 62 FR 14035, Mar. 25, 1997]

**1852.246-72 Material inspection and receiving report.**

As prescribed in 1846.674, insert the following clause:

**MATERIAL INSPECTION AND RECEIVING REPORT (APR 2015)**

(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.)

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 60 FR 40521, Aug. 9, 1995; 62 FR 14035, Mar. 25, 1997; 68 FR 45169, Aug. 1, 2003; 80 FR 12953, Mar. 12, 2015; 81 FR 3339, Jan. 21, 2015]

**1852.246-73 Human space flight item.**

As prescribed in 1846.370, insert the following clause:

**HUMAN SPACE FLIGHT ITEM (MAR 1997)**

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

"FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

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IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER.'

(End of clause)

[62 FR 14035, Mar. 25, 1997, as amended at 81 FR 24501, Apr. 26, 2016]

**1852.246-74 Contractor Counterfeit Electronic Part Detection and Avoidance.**

As prescribed in 1846.7003, use the following clause:

**CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE. (DATE)**

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

"Authentic part" means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

"Authentication" means a process to verify that a part is not counterfeit or suspect counterfeit.

"Authorized aftermarket manufacturer" means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

"Authorized supplier" means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repack, sell, or distribute the part.

"Contract manufacturer" means a company that produces goods under contract for another company under the label or brand name of that company.

"Contractor-approved supplier" means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified by the contractor or subcontractor approved by the contractor or government as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

"Counterfeit electronic part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise

misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Electronic part” means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application (section 823 (d)(2) of Pub L. 115-10).

“Original component manufacturer” means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company’s brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) *Sources of electronics parts.* In accordance with section 823(c)(3), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10), the covered contractor shall—

(1) Obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

- (i) The original manufacturers of the parts;
- (ii) Their authorized dealers; or
- (iii) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

(2) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (b) of this clause, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

- (i) The covered contractor assumes responsibility for the authenticity of parts; and
- (ii) The covered contractor performs inspection, testing and authentication of parts; and
- (iii) The covered contractor obtains traceability information for the electronic parts (*e.g.*, data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(iv) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) *Notification.* The covered contractor, including subcontractors, shall notify the NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

(d) *Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.* In accordance with section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10), the costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The covered contractor has a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and

(2) The covered contractor, including a subcontractor, notifies the applicable NASA contracting officer in writing in accordance with paragraph (c) of this clause; or

(3) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

(e) *Subcontracts.* The covered contractor shall insert this clause, including this paragraph (e), in subcontracts for—

- (1) Electronic parts;
- (2) End items, components, parts, or assemblies containing electronic parts; or

(3) Services where the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer. The covered contractor shall not alter the clause other than to identify appropriate parties.

(f) *Corrective Action.* In the event that the covered contractor supplies a counterfeit electronic part, suspect counterfeit electronic part or end item, component, or assembly containing a counterfeit electronic part to NASA, the covered contractor shall take such corrective actions as the Administrator considers necessary to remedy the use or inclusion of additional counterfeit electronic parts, suspect counterfeit electronic

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part or end items, components, or assemblies containing a counterfeit electronic part.

(End of clause)

[85 FR 52923, Aug. 28, 2020]

**1852.247-71 Protection of the Florida Manatee.**

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (JUN 2018)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammal Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (*Trichechus Manatus*) has been designated an endangered species, and the Indian River Lagoon system within and adjacent to National Aeronautics and Space Administration's (NASA's) Kennedy Space Center (KSC) has been designated as a critical habitat of the Florida Manatee. The KSC Environmental Management Branch will advise all personnel associated with the project of the potential presence of manatees in the work area, and the need to avoid collisions and/or harassment of the manatees. Contractors shall ensure that all employees, subcontractors, and other individuals associated with this contract and who are involved in vessel operations, dockside work, and selected disassembly functions are aware of the civil and criminal penalties for harming, harassing, or killing manatees.

(b) All contractor personnel shall be responsible for complying with all applicable Federal and/or state permits (e.g., Florida Department of Environmental Protection, St. Johns River Water Management District, Fish & Wildlife Service) in performing water-related activities within the contract. Where no Federal and/or state permits are required for said contract, and the contract scope requires activities within waters at KSC, the Contractor shall obtain a KSC Manatee Protection Permit from the Environmental Management Branch. All conditions of Federal, state, and/or KSC regulations and permits for manatee protection shall be binding to the contract. Notification and coordination of all water related activities at KSC will be done through the Environmental Management Branch.

(c) The Contractor shall incorporate the provisions of this clause in applicable subcontracts.

(End of clause)

[80 FR 36723, June 26, 2015, as amended at 83 FR 28387, June 19, 2018]

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**1852.247-72 Advance notice of shipment.**

As prescribed in 1847.305-70(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

\_\_\_\_ [Insert number of work days] work days prior to shipping item(s) \_\_\_\_\_ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to \_\_\_\_\_ [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

**1852.247-73 Bills of Lading.**

As prescribed in 1847.305-70(b), insert a clause substantially as follows:

BILLS OF LADING (JUN 2002)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number:

Destination: \_\_\_\_\_

(b) *Government Bills of Lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continent United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: \_\_\_\_\_ [Insert

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name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: \_\_\_\_\_ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

- (i) Item identification/ description.
- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional Weight.
- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of clause)

[67 FR 38908, June 6, 2002]

**Subpart 1852.3—Provision and Clause Matrix**

**1852.300 Scope of subpart.**

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

[57 FR 40856, Sept. 8, 1992]

**1852.301 Solicitation provisions and contract clauses (Matrix).**

**PART 1853 [RESERVED]**

**SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS**

**PARTS 1872–1899 [RESERVED]**