National Aeronautics and Space Administration

NASA FAR Supplement

The text below, accessible via the internet, comprise the official NASA-maintained version of the National Aeronautics and Space Administration supplement to the Federal Acquisition Regulation (FAR) - NASA FAR Supplement (NFS).

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NASA Federal Acquisition Regulation Supplement

Procurement Notices (PNs): Changes to the NFS require rulemaking and publication in the Federal Register when a change may have an effect on the public. Changes to internal guidance and procedures are controlled, processed, and approved internally and are not required to be published in the Federal Register. All changes are then incorporated into the single, official NASA-maintained Internet version of the NFS through the issuance of PNs. PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance.

Procurement Class Deviations (PCDs): Used to deviate from FAR and/or NFS requirements in cases where the deviation affects more than one contract action and is temporary in nature.

Procurement Information Circulars (PICs): Used for internal dissemination of procurement-related information that clarifies existing policy, is temporary in nature or episodic and generally not suitable for inclusion in the NFS.

NFS Archive: Previously issued versions of the NFS are provided for historical purposes only.

References to the Federal Acquisition Regulations (FAR), NASA Procedural Requirements (NPR), NASA Policy Directive (NPD), and agency-wide templates throughout the NFS can be explored through the following websites:

FAR
NASA Online Directives Information System (NODIS)
Agency Templates (Internal NASA Only)

For questions relating to NFS publications, contact the NASA FAR Supplement Manager, Erica D. Jones.

For questions pertaining to NASA regulations applicable to *Small Business*, please contact the NASA HQ, Office of Procurement, Small Business Point of Contract.

Recommended administrative changes to the NFS, such as corrections to misspelled words, omitted words or lines, and errors in format or in links to referenced documents shall be emailed to the NFS Manager -- include the NFS citation and a clear description of the error. Other suggestions for improving the NFS should follow the instructions in NFS 1801.271.

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PART 1801
FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.000 Scope of part.

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

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority.

(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 (Pub. L. 11-314; 51 U.S.C. 20113 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 regulation.

1801.105 Issuance.

1801.105-1 Publication and code arrangement.

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

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

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

[PN 18-11]

1801.105-2 Arrangement of regulations.

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

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

1801.106 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

NFS Segment	OMB Control Number
1823	2700-0089
1827	2700-0052
1852.223-70	2700-0160
NF 533	2700-0003
NF 1018	2700-0017

Subpart 1801.2—Administration

1801.270 Amendment of the NFS.

(a) Changes to the NFS require rulemaking and publication in the Federal Register when a change may have an effect on the public. Changes to internal guidance and procedures are controlled, processed, and approved internally and are not required to be published in the Federal Register. All changes are then incorporated into the single, official NASA-maintained Internet version of the NFS through the issuance of Procurement Notices (PNs). PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance.

(b) For guidance on application of NFS changes to solicitations and contracts, see FAR 1.108(d).

1801.271 NASA procedures for FAR and NFS changes.

(a) Recommended administrative changes to the NFS, such as corrections to misspelled words, omitted words or lines, and errors in format or in links to referenced documents shall be emailed to the NFS Manager.

(b) Requests for proposed revisions to the FAR or NFS shall be submitted in writing and shall contain the following information: (i) a description of the issue or concern the suggested revision is designed to correct, (ii) the revision in the form of a marked-up copy of the current FAR or NFS language and/or the text of any proposed language to be added, (iii) a brief explanation of the consequences of not making a change and the benefits to be expected from making a change, and (iv) any other information necessary for a clear understanding of the issue or concern, such as the relationship between the FAR and NFS coverage, legal opinions and/or concurrences, inputs and/or concurrences from other cognizant offices, and any existing agreements. All requests for proposed revisions to the FAR and NFS shall be emailed to the NFS Manager. Requests from Headquarters offices shall originate at the division level or higher, while requests from the centers shall be from the procurement officer or a higher level official. The sender's email address will suffice as the official signature for requests for proposed revisions to the FAR or NFS; the email shall include the supporting information that is emailed to the NFS Manager.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information that clarifies existing policy, is temporary in nature or episodic and generally not suitable for inclusion in the NFS. PICs should be used very carefully and their duration shall not exceed one year, unless a longer period of time is approved by the Director, Headquarters Office of Procurement, Procurement and Grant Policy Division. Any PIC that has a duration greater than one year shall be reviewed, updated as required, and revalidated, not later than on its anniversary date. The Headquarters Office of Procurement, Procurement and Grant Policy Division is responsible for the control, processing, vetting, and approval of PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

(c) PICs are posted on the online Procurement Library.

1801.273 Procurement Class Deviations.

(a) The Procurement Class Deviation (PCD) is used to deviate from FAR and/or NFS requirements in cases where the deviation affects more than one contract action and is temporary in nature. Since PCDs are processed and issued without public comment, PCDs shall be used very carefully and with a specified duration that is sufficient to allow for the formal processing of the change to the FAR and/or NFS. The Headquarters Office of Procurement, Procurement and Grant Policy Division is responsible for the control, processing, and vetting of PCDs. Approval of PCDs are in accordance with FAR 1.404(c).

(b) PCDs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

(c) PCDs are posted on the online Procurement Library.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

(a)(2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement, Procurement and Grant Policy Division for approval in accordance with 1801.271.

(b)(i) Title 41 U.S.C. 1707 requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the Agency or a significant cost or administrative impact on contractors or offerors. However, it does not define "significant effect beyond the internal operating procedures" or "significant cost or administrative impact." Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.303 Publication and codification.

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

Subpart 1801.4—Deviations from the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the procurement officer, using the agency-wide FAR & NFS Deviation Request template to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or the NFS requirement from which a deviation is sought;

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);

(6) Detailed reasons supporting the request, including any pertinent background information; and

(7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

(d) The Assistant Administrator for Procurement is the approval authority for deviations to the FAR and NFS. The authority to approve individual deviations from the socioeconomic set-aside requirement, at Appendix A, A-102.13, Construction, (b), is delegated to the Procurement Officer. A copy of approved deviations shall be submitted to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

[PN 23-18]

Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities

1801.601 General.

(a) The NASA Administrator delegates the authority to enter into and take other actions for FAR-based purchases, contracts, and for financial assistance instruments and the responsibilities in NPD 1000.3E to the Assistant Administrator for Procurement.

(b) The Assistant Administrator for Procurement redelegates this authority to the appropriate contracting activity personnel in accordance with applicable laws and regulations.

(c) The NASA Administrator delegates the authority for the necessary approvals and overall Agency-wide implementation of the Federal Activities Inventory Reform (FAIR) Act and OMB Circular A-76 to the Assistant Administrator for Procurement. The Assistant Administrator for Procurement serves as the Competitive Sourcing Official (CSO) for overall implementation of the FAIR Act and OMB Circular A-76 with NASA Center Directors delegated authority for the implementation of the FAIR Act and OMB Circular A-76 within the respective Centers subject to overall authority of CSO. NASA Center Directors can redelegate this authority to an individual within the Office of the Center Director.

[PN 18-15, PN 20-02]

1801.602 Contracting Officers.

1801.602-2 Responsibilities.

(c)(A) The contracting officer should coordinate with Agency, Center and other program office finance offices, as appropriate, when structuring the contract line item(s) (see FAR 4.1001).

(d)(i) A Contracting Officer's Representative (COR) delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COR duties may not be delegated to a position) and has no authority to exceed them. CORs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COR designation or by any means other than a contracting officer warrant.

(ii) The cognizant contracting officer may appoint a qualified Government employee to act as their representative in managing the technical aspects of a particular contract. A COR may be a NASA or Federal agency civil servant or a member of the military. A COR may also be an Intergovernmental Personnel Act (IPA) appointed detailee (5 U.S.C. 3374 authorizes the temporary assignment of employees of universities, state/local/tribal governments, and certain non-profit organizations); but shall not be delegated inherently governmental functions (FAR 7.503). In appointing an IPA as a COR, contracting officers shall seek center

counsel for conflict of interest determination related to their duties; confirm completion of Standards of Ethical Conduct for Employees of the Executive Branch training; and ensure the NF 1634 does not delegate inherently governmental functions. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses training, qualifications, and experience commensurate with the duties and responsibilities to be delegated and the nature of the contract. The Recommendation for Appointment of COR or Alternate COR template shall be used for all COR or Alternate COR recommendations.

(iii) The COR may be authorized to provide technical direction in accordance with the Statement of Work and the NF 1634, Contracting Officer's Representative (COR)/Alternate COR Delegation. Technical direction encompasses written direction from the COR to provide clarification of the contract's general description of the scope of work to include approaches, solutions, designs, refinements or shifts within tasks, or inquiries related to the general tasks and requirements in the SOW.

(iv) If necessary, the contracting officer may appoint an alternate COR to act during short absences of the COR, such as when the COR is on leave or travel. When approved by the procurement officer and in limited circumstances warranted by contract scope, workload, and the need to provide adequate oversight, the contracting officer may appoint more than one alternate COR on a contract. If more than one alternate COR is appointed, the contracting officer shall provide the COR, the alternate COR (s), and the contractor written guidance specifying how the line of succession works to clearly ensure each party knows who is acting as the COR at any given time.

(v) NASA Form 1634, Contracting Officer's Representative (COR) Delegation, shall be used to appoint CORs. The contracting officer will modify the form to address the specific contract functions delegated to the COR or retained by the contracting officer. CORs cannot redelegate their duties and responsibilities and the COR may be held personally liable for unauthorized acts. However, this does not prohibit the COR from receiving assistance for the purpose of monitoring contractor progress and gathering information. When one individual is appointed as a COR on more than one contract, separate delegations shall be issued for each contract. A separate NF 1634 shall be used to appoint the alternate CORs.

(vi) A COR delegation remains in effect throughout the life of the contract unless canceled in writing by the cognizant contracting officer or at any level above that contracting officer. The contracting officer may modify the delegation only by issuance of a new delegation canceling and superseding the existing delegation. The COR and his or her immediate supervisor are responsible for promptly notifying the contracting officer when the COR has a change in station, duty assignment, or leaves Government service.

(vii) With the exception of delegations made to construction contract CORs to issue emergency on-site change orders. The NF 1634 shall not be used to authorize a COR to initiate procurement actions or in any way cause a change to the contract or increase the Government's financial obligations. When delegating the COR authority to issue emergency on-site change orders, the contracting officer shall specify in the NF 1634 a not to exceed limitation on this authority. In no event shall the limitation exceed $25,000.

(viii) Each COR shall acknowledge receipt and accept the delegation by signing the original delegation letter and returning it to the contracting officer. The contracting officer shall file original of the COTR delegation letter in the applicable contract file. Copies of the signed COR delegation letter shall be distributed to the COR, the contractor, and each cognizant

contract administration office. Acknowledgment and distribution for terminations of COR delegations and COR delegations which revise authority, duties and responsibilities shall follow the same rules.

[PN 19-13]

1801.602-3 Ratification of unauthorized commitments.

(b) *Policy*. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c)(7) The authority in FAR 1.602-3 may be exercised only when—

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request, the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

1801.603 Selection, appointment, and termination of appointment.

1801.603-1 General.

The NASA Administrator delegates the authority to appoint source selection officials, contracting officers, contracting officer representatives, and other procurement officials to the Assistant Administrator for Procurement, who redelegates this authority to the procurement officer on a non-delegable basis, except for the appointment of the contracting officer representative. However, for a procurement action $500 million or greater, or otherwise designated by the Senior Procurement Executive, the Senior Procurement Executive retains the authority to appoint the source selection official.

[PN 18-15, PN 20-02, PN 21-01]

1801.603-2 Selection.

In addition to the selection criteria in FAR 1.603-2, the appointing official shall also confirm that there is a valid organization need.

[PN 21-07]

1801.603-3 Appointment.

(b) Delegations of procurement authority to other than GS-1102 and GS-1105 personnel shall be in accordance with the NASA Procurement Career Development and Training Policy.

(c) Contracting officers shall be appointed in accordance with Appendix D of the NASA Procurement Career Development and Training Program Policy Handbook.

(d) The procurement officer shall submit requests for approval to appoint an individual as a contracting officer in occupational job series other than GS-1102 and GS-1105 using the "Enterprise Contracting Officer Warrant Nomination (Non-GS-1102/1105)" template to the Acquisition Career Manager for approval by the Assistant Administrator for Procurement prior to appointment.

[PN 21-07]

1801.604 Contracting Officer's Representative (COR).

1801.604-70 Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Requirements.

(1) These requirements apply to all individuals appointed as CORs and alternate CORs on NASA contracts, including Phase II and Phase III awards made under NASA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs. These requirements do not apply to CORs on Phase I SBIR or Phase I STTR awards.

(2) The following certificates, if issued in accordance with FAI certification requirements, by another civilian agency, are equivalent to a FAC-COR certificate at NASA:

(i) FAC-COR Certifications

(ii) Federal Acquisition Certification in Contracting (FAC-C);

or

(iii) Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) Mid-Level.

(3) An individual with a FAC-COR certificate does not necessarily meet the requirements for the FAC-C or the FAC-P/PM mid-level/journeyman.

(4) Individuals with equivalent certificates who will be appointed as CORs must:

(i) update their profile in Cornerstone on Demand (CSOD) to reflect NASA as their agency of employment; and

(ii) inform their Center Training Coordinator and the Acquisition Career Manager (ACM) in the Headquarters Office of Procurement that they have updated their agency of employment to NASA.

(5) *COR Certification Requirements*

(i) To earn Level I FAC-COR Certification, individuals must complete an 8-hour self-paced COR online training, available via CSOD.

(ii) To earn Level II FAC-COR Certification, individuals must have 1 year of previous COR experience and complete 40 hours of basic COR training approved by the ACM. NASA training approved by the ACM is available under the NASA Shared Service Center's Agency-wide COR Training Blanket Purchase Agreement (BPA), and via CSOD.

(iii) To earn Level III FAC-COR Certification, individuals must have 2 years of previous COR experience and complete 60 hours of training; which includes the 40 hour Advance COR Workshop and the 20 hour Program Management Basics course, available via CSOD.

(6) *Continuing Education*. CORs must maintain their skills currency through continuing education.

(i) To maintain Level I FAC-COR Certification, CORs are required to earn 8 hours of continuous learning points (CLPs), within the common two-year continuous learning period.

(ii) To maintain Level II FAC-COR Certification, CORs are required to earn 40 CLPs, within the common two-year continuous learning period.

(iii) To maintain Level III FAC-COR Certification, CORs are required to earn 40 CLPs, within the common two-year continuous learning period.

(7) Supervisors remain responsible for working with CORs to identify those activities and opportunities of greatest benefit to the professional development of an individual. The training, professional activities, education and experience that are used to meet the continuing education requirements must be job related.

(i) ACM approved training is available under NASA Shared Service Center's Agency-wide COR Training BPA, and via CSOD.

(ii) The FAI FAC-COR website provides additional guidance on training that will meet CLP training requirements.

(8) A FAC-COR certification will expire if the continuing education requirements are not met and the individual will no longer be eligible to be a COR.

(9) FAC-COR training, both basic and continuous, will be tracked in CSOD. CORs are responsible for ensuring they meet the continuous learning requirement and that their learning history is accurate.

(h) Contracting officer's responsibilities.

(1) The contracting officer shall verify that the proposed COR has a FAC-COR Certification before signing NF 1634.

(i) The contracting officer must take into consideration the appropriate FAC-COR Level needed to protect the government's interest. The contracting officer must consider the risk and complexity associated with the acquisition, including contract type, in order to determine the appropriate level of FAC-COR coverage. The contracting officer should consider the following in determining the appropriate level of FAC-COR certification:

(A) Level I - This level of COR is generally appropriate for simple, low-risk contract vehicles, such as supply contracts and orders.

(B) Level II - This level of COR is generally appropriate for contract vehicles of moderate to high complexity and risk, including both supply and service contracts.

(C) Level III – This level of COR is generally appropriate for the most complex, critical risk, and mission critical contracts within the agency.

[PN 21-03]

Subpart 1801.7—Determinations and Findings

1801.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The NASA Administrator may make any of the D&Fs that may be made by the Senior Procurement Executive or by a contracting officer.

1801.770 Legal review.

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.

PART 1802
DEFINITIONS OF WORDS AND TERMS

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PART 1802
DEFINITIONS OF WORDS AND TERMS

1802.000 Scope of part.

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

Subpart 1802.1—Definitions

1802.101 Definitions.

"Administrator" means the Administrator or Deputy Administrator of NASA.

"Chief of Contracting Office" means the person having direct responsibility for the operation of a contracting office as defined in FAR 2.1. This person also has procurement authorities assigned by the Federal Acquisition Regulation and its supplements, serves as a business advisor to the Head of the Contracting Activity (HCA), and performs contracting authorities as delegated by the HCA or Senior Procurement Executive.

[PN 24-03]

"Contracting activity" in NASA includes the NASA Headquarters installation, the NASA Shared Services Center, the NASA Management Office, Information Technology Procurement Office, and the following field installations: Ames Research Center, Armstrong Flight Research Center, John H. Glenn Research Center at Lewis Field, Goddard Space Flight Center, Lyndon B. Johnson Space Center, John F. Kennedy Space Center, Langley Research Center, George C. Marshall Space Flight Center, and John C. Stennis Space Center. A major program that may have contracts at multiple field centers may also be considered a "contracting activity."

[PN 18-15]

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

"Head of the contracting activity (HCA)" means the procurement officer of the buying location, except in the following situations:

Procurement Activity	Assigned HCA*
NASA Office of JPL Management and Oversight (NOJMO) contracts	Office of Procurement (OP) Director of the HQs Procurement Strategic Operations Division
Exploration and Systems Development Mission Directorate (ESDMD) contracts and Science Operations Mission Directorate (SOMD) contracts	OP Director of the HQs Procurement Strategic Operations Division

Procurement officers shall coordinate HCA activities with designated individuals within the Office of the Center Director in accordance with field installation procedures. The Office of Procurement, Director of the Procurement Strategic Operations Division shall coordinate HCA activities with SOMD and ESDMD.

* HCA Functions for major programs can be delegated as part of the ASM process.

[PN 18-15, PN 20-02, PN 23-03, PN 24-06]

"Procurement Portfolio Manager" means the business advisor responsible for providing timely and definitive guidance and support to Centers, Mission Directorates, Mission Support Offices, and Enterprise Requirements Managers on procurement issues and actions on assigned procurement portfolios.

[PN 21-01]

"Procurement officer" means the senior contracting official and head of contracting activity (HCA).

[PN 24-03]

"Senior Procurement Executive" means the Assistant Administrator or Deputy Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters.

PART 1803
IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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PART 1803
IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101-1 General.

The statutory Federal conflict of interest prohibitions codified at 18 U.S.C. section 208 and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Parts 2635, Subpart D, and 2540. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. section 218). The regulatory impartiality restrictions issued by the U.S. Office of Government Ethics (OGE) are provided in 5 CFR Part 2635, Subpart E. All NASA personal involved in acquisitions shall become familiar with these regulatory restrictions.

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the Center’s Office of Inspector General.

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.

1803.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties.

(i) Personnel participating in source evaluation board (SEB) procedures (see 1815.370) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(ii) Personnel assigned to the contracting office.

(iii) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(iv) Small business specialists.

(v) Personnel assigned to counsel's office.

(vi) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(vii) Personnel responsible for the review and approval of documents in accordance with the Procurement Administrative Lead Time Tracking procedures in subpart 1807.71.

(viii) Other Government employees authorized by the contracting officer.

(ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104-4(a)(i) through (viii).

(x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in FAR 2.101 shall assure that the material is marked with the legend in FAR 3.104-4(c) at the time the material is prepared.

(ii) Unless marked with the legend "SOURCE SELECTION INFORMATION — SEE FAR 2.101 and 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see FAR Subpart 7.1). All documents, once released, must remain available to the public until the conclusion of the acquisition.

[PN 21-01]

1803.104-7 Violations or possible violations.

(a)(1) The procurement officer is the individual designated to receive the contracting officer's report of violations.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Senior Procurement Executive.

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Senior Procurement Executive simultaneous with transmittal to the Administrator.

1803.104-70 Restrictions on NASA personnel participating in proposal evaluations or selection decisions.

For acquisitions of any dollar value, an employee may not participate in procurement planning or the formulation of a procurement strategy, including Procurement Strategy Meetings, or in a proposal evaluation or selection decision if the employee would not be in compliance with statutory U.S. Government ethics requirements, the impartiality regulations issued by U.S. Office

of Government Ethics (OGE) at 5 CFR 2635, Subpart E, or any other applicable U.S. Government ethics requirements. Participants should contact a NASA ethics official in their local Office of the General Counsel, or in the case of NASA Headquarters an ethics official in the Headquarters Office of the General Counsel, for advice on the application of these provisions.

[PN 19-09]

Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Headquarters Office of Procurement, Procurement Strategic Operations Division. Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to Headquarters Office of Procurement, Procurement Strategic Operations Division. The report shall include the reasons for suspecting collusion. The Headquarters Office of Procurement, Procurement Strategic Operations Division shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with 1809.470.

Subpart 1803.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Senior Procurement Executive has been delegated the authority to authorize an exception to the policy in FAR 3.601. The Senior Procurement Executive has redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of $100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Senior Procurement Executive for approval.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.

(a) The Senior Procurement Executive has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. chapter 11, 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

(a) Procurement officers shall make reports to the Senior Procurement Executive. The Senior Procurement Executive is responsible for the actions, notices, and decisions required by FAR 3.705(c), (d), and (e).

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.

(b) Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF-LLL) furnished pursuant to FAR 3.803 to the Headquarters Office of Procurement, Procurement Strategic Operations Division. The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

1803.806 Processing suspected violations.

The Senior Procurement Executive is the designated official to whom suspected violations of the Act shall be referred. The suspected violations should be reported through the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

Subpart 1803.9—Contractor Employee Whistleblower Protections

1803.900 Scope of subpart.

This subpart applies to NASA instead of FAR subpart 3.9.

(a) This subpart implements 10 U.S.C. 4701 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.

[PN 23-12]

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. 4701 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.

[PN 23-12]

(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. 4701 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. 4701, 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. 4701 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 by any agreement, policy, form, or condition of employment.

[PN 18-11, PN 23-12]

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.

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.

PART 1804
ADMINISTRATIVE MATTERS

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PART 1804
ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Execution

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204-1**,** Approval of Contract, in solicitations, contracts, and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert "NASA Senior Procurement Executive" in the clause's blank space.

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.

[PN 18-11]

1804.171 NASA Contract Writing System.

(a) The NASA Contract Writing System (NCWS) is NASA's comprehensive agency tool that supports contract writing and administration, workload management and data reporting. For any new award above the micropurchase threshold (including, but not limited to, any purchase order, task order or delivery order), all NASA personnel shall use NCWS, except for: (1) BPA call orders and purchase orders where purchase card is the paying mechanism, (2) training expenditures made using Standard Form 182, (3) emergency acquisitions in accordance with FAR Part 18, and (4) contracts awarded before the date that NCWS becomes fully operational. For those items identified in (1) through (4) of this section, any necessary contract administration and closeout for that award shall be performed in NASA's Core Financial module (CF).

(b) Centers shall obtain the approval to administer any award in the agency contract writing system, if it was originally awarded in another system, from the Headquarters Office of Procurement, Procurement Strategic Operations Division, and Headquarters Office of the Chief Financial Officer.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace

Information (CASI), Attention: Acquisitions Collections Development Specialist, 7115 Standard Drive, Hanover, MD 21076-1320.

1804.203 Taxpayer identification information.

Instead of using the last page of the contract to provide the information listed in FAR 4.203(a), NASA installations may allow contracting officers to use a different distribution method, such as annotating the cover page of the payment office copy of the contract.

Subpart 1804.4—Safeguarding Classified Information within Industry

1804.402 General.

(b) NASA security policies and procedures are prescribed in NPD 1600.2, NASA Security Policy; NPR 1620.2, Facility Security Level Determinations; NPR 2810.1 Security of Information and Information Systems; and NPD 2810.1, NASA Information Security Policy.

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 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.
(See PIC 24-03A)

1804.470-1 Scope.

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

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.

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 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.

1804.470-4 Contract clause.
See PCD 21-01B for guidance.

(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.

Subpart 1804.5—Reserved

[PN 18-15]

Subpart 1804.6—Contract Reporting

1804.604 Responsibilities.

(b)(1)(A) All reportable Center actions must be entered in FPDS. The process for reporting contract actions to FPDS shall, when available, be completed via the contract writing system.

(B) Data in FPDS is stored indefinitely and is electronically retrievable. Therefore, the contracting officer may reference the contract action report (CAR) approval date in the associated Government contract file instead of including an electronic copy of the electronically submitted CAR in the file. Such reference satisfies contract file documentation requirements of FAR 4.803(a).

(c) On an annual and quarterly basis, each Center shall certify its annual and quarterly certification and data validation results for the preceding fiscal period in accordance with the NASA Data Improvement Plan requirements at NASA Data Improvement Plan.

[PN 18-08, PN 24-11]

Subpart 1804.8—Government Contract Files

1804.802 Contract Files.

(f) The official contract file is as depicted in FAR 4.801 through 4.803 for files containing the records of all contractual actions. All official contract files (including, but not limited to, all documents whether they originated from the Government or the contractor) shall be stored as follows:

(1) All new NCWS awards shall be stored electronically in the NCWS system.

(2) All pre-NCWS awards may continue to be stored either electronically in the system of origin, or in paper format, but not in both.

(g) Any exceptions to the requirements described in this section shall be approved by the Headquarters Office of Procurement, Procurement Strategic Operations Division before filing the documents.

1804.802-70 Handling of classified material.

When a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

1804.803 Contents of contract files.

1804.803-70 Format and Checklist.

(a) For contract files stored in NCWS. Contracting officers shall store contract file content in accordance with the folder structure included within NCWS.

(b) For paper or electronic contract files not stored within NCWS. Contracting officers shall organize contract file content in accordance with the file structure established on the version of the NASA Form (NF) 1098, Checklist for Contract Award File Content, which was in effect at the time the procurement was initiated. Contracting officers shall ensure that a completed copy of the NF 1098 is contained in the paper or electronic contract file.

1804.804 Closeout of contract files.

See Appendix B, for further contract closeout procedures.

1804.804-2 Closeout of the contracting office files if another office administers the contract.

(b) Upon receiving the NASA Form 1611 or DD Form 1594, Contract Completion Statement, from the contract administration office and complying with FAR 4.804-2(b), the contracting officer shall complete the form.

1804.804-5 Procedures for closing out contract files.

(a) When the contracting office retains contract administration (excluding acquisitions under the simplified acquisition threshold), the contracting officer must comply with FAR 4.804-5(a) by completing NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.

(b) To comply with FAR 4.804-5(b), the contracting officer must complete NASA Form 1611 or DD Form 1594, Contract Completion Statement, except for acquisitions under the simplified acquisition threshold.

1804.805 Storage, handling, and disposal of contract files.

(a) For additional information and procedures for handling, storing, and disposing of contract files see NPR 1441.1, NASA Records Management Program Requirements and NRRS 1441.1, NASA Records Retention Schedules.

1804.805-70 Review, separation, and retirement of contract files.

(a) Upon determination of contract completion under the procedures outlined in 1804.804, each office shall remove the official contract files from the active file series, mark each file folder with "Completed (Date)", and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of $25,000 or less and for

contracts of more than $25,000, to facilitate later disposal. Any original or official file copies of documents contained in duplicate or "working" contract files shall be removed and placed in the appropriate official file; any remaining material in the duplicate or "working" file shall be destroyed immediately or segregated and marked for early disposal.

(b) Each office shall review contractor "general" files (i.e., a file containing documents relating generally to a contractor rather than a specific contract) at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor's current or future capability, performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NPR 1441.1, NASA Records Retention Schedules.

Subpart 1804.9—Taxpayer Identification Number Information

1804.904 Reporting payment information to the IRS.

Each NASA installation, that has its own employer identification number, may elect to report to the IRS payments under purchase orders and contracts for merchandise and other exempt bills.

Subpart 1804.10—Uniform Use of Line Items

1804.1001 Policy

(c) The contracting officer should coordinate with Agency, Center, other program offices, and finance offices, as appropriate, when structuring the contract line item(s).

[PN 19-13]

Subpart 1804.16—Unique Procurement Instrument Identifiers

1804.1602 Identifying the PIID and supplementary PIID.

(a)(5)(i) Modifications to letter contracts shall be numbered in accordance with FAR 4.1603(b)(2). Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(ii) Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (a)(5)(i) of this section.

1804.1603 Procedures.

(a) All PIIDs for all new NASA awards shall be 13 digits in length. Letter contracts shall be numbered in accordance with the requirements for the definitive contract expected to result from the letter contract.

(a)(3) For intragovernmental transactions, NASA shall use the letter, "T" for the ninth digit of the PIID. Intragovernmental transactions are, for example, requests to other Government agencies to furnish supplies or services. Intragovernmental transactions do not include awards by NASA to fulfill requests from other agencies. For Broad Agency Announcements (BAAs), NASA Research Announcements (NRAs), and Announcement of Opportunities (AOs), NASA shall use the letter, "N" for the ninth digit of the PIID.

(a)(4) NCWS automatically assigns the 10th digit for all transactions processed in NCWS. However, some transactions are not processed in NCWS. It is necessary to ensure differentiation between PIIDs assigned to transactions processed in NCWS and PIIDs assigned to transactions processed outside of NCWS to meet Federal Procurement Data System (FPDS) reporting requirements. If NCWS automatically assigns the PIID to these transactions, use of letters in the 10th digit is not required. When transactions are processed outside of NCWS, the following letters must be used in the 10th digit of the PIID:

E – Emergency acquisitions made in accordance with FAR Part 18, Emergency Acquisitions.

H – Training expenditures made using the Standard Form 182, Authorization, Agreement and Certification of Training.

W – Procurement actions using the purchase card as the method of payment.

(a)(5) Illustration of PIID. The following illustrates two properly configured NASA PIIDs:

(i) PIID 80GSFC17C0001 would be a GSFC action signed in FY17. It would be the first one issued at the Center, and the action type would be a contract.

80	GSFC	17	C	0001
NASA	GSFC	FY17	Contract	Serial No. 1

(ii) PIID 80MSFC17PW001 would be a MSFC action signed in FY17. This action would be the first one issued at the Center, and the action type would be a purchase order, done outside of NCWS using the purchase card as a method of payment. Had the purchase order (with or without the purchase card as a method of payment) been prepared within NCWS, the last four digits would have been 0001 instead of W001.

80	MSFC	17	P	W	001
NASA	MSFC	FY17	Purch Order	Purch Card Payment	Serial No. 1

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

"Transfer of a contract," as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

1804.7002 Approval of Transfer Requests.

(a) The approval authority for requests to transfer a contract is the official in charge of the cognizant Headquarters program office or designee. Requests for approval shall be submitted by the director of the transferring installation after receiving the concurrence of the director of the receiving installation. Concurrence of the NASA Associate Deputy Administrator is also required for a transfer where an installation's roles and missions may be affected.

(b) Approval of a program transfer by the cognizant Headquarters official constitutes approval to transfer program-related contracts.

(c) Approval of the transfer of institutional related services above the simplified acquisition threshold has been obtained through Mission Support Future Architecture Program (MAP) Office of Procurement and Office of Small Business Program Transformation Project MSC decisions.

1804.7003 Responsibilities of the contracting officer of the transferring installation.

1804.7003-1 Coordination.

The contracting officer of the transferring installation shall take the following steps before transferring the contract:

(a) Agree on a plan and schedule with the contracting officer of the receiving installation for transferring contract responsibility and contract files.

(b) Coordinate with the following offices:

(1) Financial Management Office, to determine the contract financial records to be transferred and the method, timing, and dollar amount of such transfers.

(2) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(3) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(4) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(5) Transportation Office, to determine the status of bills of lading furnished the contractor.

(6) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(7) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

1804.7003-2 File inventory.

The contracting officer of the transferring installation shall prepare an inventory of the contract file. This inventory shall also include a separate listing of all outstanding requests for contract administration assistance issued to other Government agencies, indicating the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services yet to be performed for each requested function. Copies of this inventory shall be provided to the contracting officer of the receiving installation.

1804.7003-3 Notifications.

The contracting officer of the transferring installation shall provide written notification of the planned transfer to the contractor and all agencies performing or requested to perform administration services.

1804.7003-4 Transfer.

(a) Upon completion of the actions described in 1804.7003-1 through 1804.7003-3, the contracting officer of the transferring installation shall issue a letter to the contractor, agencies performing contract administration functions, contracting officer representatives, and the contracting officer of the receiving installation. This letter shall provide notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer of the receiving installation.

(b) After issuing the letters described in 1804.7003-4(a), the contracting officer of the transferring installation shall send the contract file to the contracting officer of the receiving installation with a letter transferring contract responsibility. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer of the receiving installation.

1804.7003-5 Retention documentation.

The contracting officer of the transferring installation shall retain for permanent file a copy of the approvals and concurrences required by 1804.7002, the transfer acceptance letter of the contracting officer of the receiving installation, and any additional documents necessary for a complete summary of the transfer action.

1804.7004 Responsibilities of the contracting officer of the receiving installation.

1804.7004-1 Pre-transfer file review.

The contracting officer of the receiving installation shall review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract. This review may be waived by written notification to the contracting officer of the transferring installation.

1804.7004-2 Post-transfer actions.

The contracting officer of the receiving installation shall—

(a) Provide the contracting officer of the transferring installation written acceptance of contract responsibility and receipt of the contract files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's technical representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to affected installation offices; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Release or Posting of Documents

1804.7101 Policy.

It is the responsibility of all involved in the acquisition process, who have access to contractor proprietary or otherwise sensitive non-public data to handle such data in an appropriate manner

to prevent the unauthorized disclosure of sensitive and/or proprietary contractor information or data.

1804.7102 General.

Contractor proprietary or other sensitive non-public data can be inappropriately released by mistakenly providing a contractor's financial or technical proprietary data to another contractor, inadvertently exposing or allowing access to sensitive internal agency information or export controlled data, or releasing documents which contain metadata during a competitive procurement. Because of the potential negative impact of these inadvertent disclosures of contractor proprietary or otherwise sensitive non-public data on the integrity of the procurement process, great care must be taken in the handling of this data to prevent the unintentional disclosure of contractor proprietary or other sensitive non-public data.

1804.7103 Procedures.

Contracting officers shall complete the electronic document posting checklist prior to any documents or files being uploaded, released, transmitted, or posted to an internet accessible location. Exempted documents include Agency level directives posted to the NODIS library or other policy documents available through the Federal Register.

Subpart 1804.72—Reserved

Subpart 1804.73—Procurement Requests

1804.7301 General.

(a) The procurement request (PR) is known as a "purchase requisition" (requisition) and is developed in NASA's Integrated Enterprise Management Program/Core Financial Module (CF). In order for a requisition to be sent forward for action, CF requires that several coordinations be obtained first. However, there are additional required coordinations at the Agency level and sometimes at the Center level. The initiator of the requisition or technical representative is responsible for obtaining those additional coordinations. NASA Form (NF) 1707, Special Approvals and Affirmations for Requisitions, must be used to document additional coordinations. The completed NF 1707 and any additional special approvals or affirmations required must be electronically attached to the requisition in CF and shall include the name of the approver and date approved. The contracting officer shall include a copy of the completed NF 1707 and any additional special approvals or affirmations in the appropriate NCWS electronic contract file folder. The procurement office shall not accept a requisition until all required coordinations have been documented. The NF 1707 is not required for within scope actions for which special approvals and affirmations have previously been obtained.

(b) Except in unusual circumstances, the contracting officer shall not issue solicitations until the contracting officer receives an approved certification that funds are available. However,

the contracting office may take necessary actions, up to the point of obligation of funds, before the acceptance of the requisition certifying that funds are available only when—

1. Such action is necessary to meet critical program schedules;
2. Program authority has been issued and funds to cover the acquisition will be available prior to the date set for contract award or contract modification;
3. The procurement officer authorizes such action in writing before solicitation issuance; and
4. The solicitation includes the clause at FAR 52.232-18, Availability of Funds. The clause shall be deleted from the resultant contract.

PART 1805
PUBLICIZING CONTRACT ACTIONS

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PART 1805
PUBLICIZING CONTRACT ACTIONS

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information.

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

Subpart 1805.2—Synopses of Proposed Contract Actions

1805.205-70 Special situations.

In accordance with NPD 5000.2, Small Business Subcontracting Goals, a Sources Sought Notice shall be posted for a minimum of 10 business days for proposed contract actions that exceed $50 million. The posting requirement is optional for proposed contract actions of $50 million or less.

1805.207 Preparation and transmittal of synopses.

(c)(10) The description of the duration of the contract period shall include the basic contract and any option period, including the period permitted by FAR 52.217-8, Option to Extend Services.

(c)(15) Notices for non-competitive solicitations, including non-competitive follow-on actions to contracts initially awarded utilizing full and open competition, shall provide sufficient information regarding the proposed requirement to allow potential sources to determine whether they possess the requisite capabilities and to make an informed business decision regarding whether to respond.

1805.207-70 Synopses of Architect-Engineer Services.

(a) *Architect-Engineer Services.*

(1) Each notice publicizing the acquisition of architect-engineer services shall be headed *"C. Architect-Engineer Services."*

(2) In addition to meeting the requirements of FAR 5.207(c)**,** the project description shall—

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 330, Architect-Engineer Qualifications, Part I – Contract Specific Qualifications, if required;

(ii) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards.

(a) 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 $7 million or greater.

(1) Agency procedure is to make a public announcement of awards $7 million or greater when the authority of section 8(a) of the Small Business Act is utilized.

[PN 20-04]

1805.303-70 Definitions.

"Anticipated values" as used in this subpart, means—

(a) The estimated value of the contract (including unexercised options);

(b) The expected definitized value of a letter contract or undefinitized contract action; or

(c) The maximum value of an indefinite delivery, time and material, or labor hour contract.

"Contract actions" as used in this subpart, means in addition to the definition found in FAR 5.001, letter contracts and undefinitized contract actions.

[PN 20-04]

1805.303-71 Actions requiring NASA Headquarters public announcement or Administrator Notification of a Significant Contract Action (ANOSCA)

(a) *NASA Headquarters public announcement*. Contracting officers shall submit a NASA HQ public announcement for the following:

(1) Contract actions with anticipated values equal to or greater than $7 million, but less than $30 million.

(2) Exercise of option(s) with values equal to or greater than $30 million.

(b) *ANOSCA and NASA Headquarters public announcement*. Contracting officers shall submit both an ANOSCA and a NASA Headquarters public announcement for contract actions with anticipated values equal to or greater than $30 million.

(c) For other potentially significant contract actions at any dollar value that may be of major interest to NASA Headquarters or have public information implications, the contracting officer shall contact the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement to determine whether an ANOSCA or NASA Headquarters public announcement is required. Examples of other potentially significant actions may include—

(1) Terminations;
(2) Contract modifications;
(3) Issuance of stop work orders;
(4) Classified actions;
(5) Cost overrun modifications, or
(6) Orders placed under single or multiple award contracts (including GSA).

[PN 20-04]

1805.303-72 Procedures.

(a)(1) Contract actions requiring an ANOSCA or NASA Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of its status until the following procedures have been completed (However, see below for the exception for Small Business Set-Aside notifications to Offerors prior to ANOSCA approval, as described in (a)(3)(i)):

(2) The contracting officer shall prepare an ANOSCA or NASA Headquarters public announcement using the NASA Notification of Contract Action Template.

(3)The NASA Notification of Contract Action shall be submitted electronically encrypted to the cognizant Procurement Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(i) For set aside actions under small business programs, the CO shall submit the NASA Notification of Contract Action not later than concurrently with the issuance of the preaward notice to offerors described in FAR 15.503(a)(2). Following the required time period for small business size challenges described in FAR 19.302(d), the CO shall inform the cognizant Procurement Strategic Operations Division Procurement Analyst, via email, if any size challenges were received. If NASA does not receive any timely size challenges, then the procurement analyst shall complete the ANOSCA routing process.

(ii) For actions to exercise an option, the CO shall submit the NASA Notification of Contract Action immediately after the issuance of the preliminary notice of intent to exercise an option, in accordance with FAR 52.217-9 for services, or when providing the written notice to the contractor to exercise an option as permitted by the option clause in the contract.

(iii) For all other actions, the NASA Notification of Contract Action shall be submitted at least three (3) business days prior to the planned public announcement.

(4) The contracting officer shall confirm receipt of the NASA Notification of Contract Action from the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(5) NASA Headquarters Office of Legislative and Intergovernmental Affairs will coordinate the timing for notifying offerors with the contracting officer such that the offerors are notified prior to Congress, and Congress is notified prior to public announcement.

(b) Installations may proceed with award and local release of the information after-NASA Headquarters Office of Communications makes the public announcement, which occurs at 5:00 PM ET on the agreed upon date, consistent with FAR 5.303.

[PN 20-04, 23-01]

Subpart 1805.4—Release of Information

1805.402 General public.

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, the following information on NASA acquisitions may be released:

(i) The names of firms invited to submit offers.

(ii) The names of firms that attended any pre-bid or pre-proposal conferences.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

1805.403 Requests from Members of Congress.

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative and Intergovernmental Affairs for approval and release.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes (except FBO announcements) is not authorized in NASA.

Subpart 1805.70—NASA Strategic Sourcing Repository

1805.7001 General.

The NASA Office of Procurement Strategic Sourcing Repository is a searchable tool used to identify existing NASA contracts available for Centers to use to fulfill emerging needs. In order to keep the repository up-to-date, the contracting officer shall complete and submit the information specified on the Office of Procurement Strategic Sourcing Publicizing Instructions webpage not later than thirty days after award of an Agency-wide contract, Multi-Center contract, or Center-wide contract. The definitions for Agency-wide, Multi-Center, and Center-wide contract can be found on the Office of Procurement Strategic Sourcing website.

[PN 18-04, PN 20-07]

PART 1806
COMPETITION REQUIREMENTS

(Revised June 8, 2017)

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PART 1806
COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources.

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

(b)(1) The Senior Procurement Executive is the designated official to approve the determination and findings required by FAR 6.202(b).

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1806.202-70 Formats.

The contracting officer shall use the agency-wide Authority to Exclude a Source Determination and Findings template to document the file for all actions excluding a particular source under the authority of FAR 6.202(a).

Subpart 1806.3—Other Than Full and Open Competition

1806.302 Circumstances permitting other than full and open competition.

1806.302-4 International agreement.

(c) Pursuant to 10 U.S.C. 3204, an individual justification for other than full and open competition under the authority of FAR 6.302-4 is not required when the procurement officer signs a Memorandum for the Record that describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition.

[PN 23-12]

1806.302-7 Public interest.

(c)(2) The NASA Headquarters, Office of Legislative and Intergovernmental Affairs is responsible for notifying Congress. The Headquarters Office of Procurement, Procurement Strategic Operations Division shall request the notice to Congress be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302-7(c)(1) in any format that clearly documents the determination and the supporting findings.

1806.303 Justifications.

1806.303-1 Requirements.

(c) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302-7 to the Headquarters Office of Procurement, Procurement Strategic Operations Division, unless one of the exceptions at FAR 25.401 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303-1.

1806.303-170 Sole-source purchases by contractors.

The requirements of FAR Part 6 and NFS part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified.

1806.303-2 Content.

(a) The contracting officer shall use the Justification for Other than Full and Open Competition (JOFOC) template to document the file for all JOFOC actions using the authorities under FAR 6.302.

1806.303-270 Use of unusual and compelling urgency authority.

(a) When using the authority of FAR 6.302-2, the justification required in FAR 6.303 shall describe and provide rationale as to the extent and nature of the harm to the Government by: quantifying the serious injury; estimating the cost and describing the basis for the estimate of the financial injury. If personal injury or loss of life or any other injury is probable, describe the circumstances behind this potential injury/loss and why no other action could avert these conditions. Include a chronological explanation of events that caused the urgent situation. The justification must also explain the extent to which competition is limited and describe the extent to which maximum practicable competition was obtained given the circumstances.

(b) If the authority at FAR 6.302-2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303-2 and;

(1) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open

competition, together with a description of the circumstances that prevented award in a timely manner; and

(2) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304 Approval of the justifications.

(a) Contracting officers shall obtain concurrences and approvals for justifications. Additionally, if there are any changes to the requirements, basis for the justification, market conditions, or increases in the estimated value of the proposed action occur at any time prior to award, the contracting officer shall re-obtain the required concurrences and approvals via a revised justification. Concurrences and approvals for justifications of contract actions consistent with the dollar values identified in FAR subparts 6.2 and 6.3 shall be obtained from the following NASA officials:

(a)(2) The approving official is the contracting activity Competition Advocate.

(a)(3) The concurring officials are the procurement officer and the contracting activity Competition Advocate. The approving official is the head of the contracting activity. The approval authority may not be delegated to other than the installation's deputy procurement officer.

(a)(4) The concurring officials are the procurement officer, the contracting activity Competition Advocate, the head of the contracting activity, and the Agency Competition Advocate. The approving official is the Senior Procurement Executive.

(b) For proposed contract actions requiring approval by the Senior Procurement Executive, the justification shall be transmitted electronically to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(c) Regardless of dollar value, class justifications shall be approved by the Senior Procurement Executive.

[PN 19-05, PN 20-03, PN 24-05]

Subpart 1806.5—Advocates for Competition

1806.501 Requirement.

(1) The Deputy Assistant Administrator for Procurement is the agency competition advocate, reporting to the Assistant Administrator for Procurement on issues related to competition of NASA acquisitions.

(2) The designated individual competition advocate at each NASA installation is identified in the Procurement Ombudsman / Competition Advocate Points of Contact listing.

[PN 24-02]

1806.502 Duties and Responsibilities.

(b) Competition advocates shall submit fiscal year annual reports to the agency competition advocate on or before December 1 of each year. The report shall address FAR 6.502 requirements for competition and commercial products and commercial services reporting by means of concise, self-explanatory bullets for each element utilizing the agency competition advocate reporting template.

[PN 20-03, PN 23-16]

PART 1807
ACQUISITION PLANNING

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PART 1807
ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

1807.103 Agency-head responsibilities.

(e)(i) Except as provided in paragraphs (e)(i)(D) and (e)(iii) of this section, acquisition plans shall be prepared using the agency-wide Procurement Strategy Meeting (PSM) for contracts or Written Acquisition Plan templates and according to the following:

(A) Acquisitions for human space flight end item(s), significant radioactive materials (defined as levels of radioactive material onboard spacecraft and/or launch vehicle that require nuclear launch authorization by the Administrator or Executive Office of the President as described in NPR 8715.26), or with a total estimated dollar value of $2 Billion or greater including Broad Agency Announcements, by a Headquarters Procurement Strategy Meeting (PSM) Executive Summary Presentation and a written acquisition plan.

(B) Acquisitions with a total estimated dollar value of $500 million or greater, or otherwise designated by the Senior Procurement Executive(SPE), by a PSM and Executive Summary Presentation.

(C) Acquisitions with a total estimated dollar value below $500 million, unless otherwise designated by the SPE, a PSM or written acquisition plan.

(D) Acquisitions with a total estimated dollar value not expected to exceed $10 million, in accordance with installation procedures.

(ii) The total estimated dollar value of the acquisition shall include the values of multiple awards, all options and all phases of a phased acquisition.

(iii) Acquisition plans are not required for the following:

(A) Orders issued against an enterprise contract in Appendix A.

(B) Broad agency announcements or unsolicited proposals.

(C) Basic research from nonprofit organizations.

(D) Utility services available from only one source.

(E) Industrial facilities required in support of related contracts.

(F) Acquisitions from any of the mandatory Government sources listed at FAR 8.002 and 8.003.

(g) Acquisition plans may be prepared on a program or system basis when practical. In such cases, the plan should fully address all component acquisitions of the program or system.

(j) (i) Acquisition plans shall be approved before soliciting proposals.

(ii) The Senior Procurement Executive (SPE) or designee is the concurring authority for the PSM Executive Summary Presentation and the Chief Acquisition Officer (CAO) or designee is the approving authority for the written acquisition plans for acquisitions described in 1807.103(e)(i)(A).

(iii) The SPE, or designee, is the approving authority for the PSMs and Executive Summary Presentations for acquisitions described in 1807.103(e)(i)(B).

(iv) The Head of the Contracting Activity (HCA) is the approval authority for PSMs or written acquisition plans described in 1807.103(e)(i)(C). The HCA may delegate

this approval authority to no lower than one level above the contracting officer for acquisitions with a total estimated dollar value of $50 million or lower.

(v) Approval of an acquisition plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. Contracting officer shall ensure all deviations are approved in accordance with the procedures described in FAR subpart 1.4 and subpart 1801.4.

(vi) A single acquisition plan may be used for all phases of a phased acquisition provided the plan fully addresses each phase, and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the plan shall be amended and approved at the same level as the original plan.

(vii) Significant changes to an approved acquisition plan must be documented by an addendum to the approved plan. "Significant" changes may include, but are not limited to, impacts to contract line-item structure, contract type, fee structure, increases or decreases of 50 percent of the estimated cost or price, evaluation criteria at the factor/subfactor level, changes that invalidate the description of phases in phased acquisitions or changes resulting from action items associated with the Acquisition Strategy Meeting (ASM). All other minor changes should be documented in the contract file.

(A) Significant changes to Headquarters' approved acquisition plans shall be approved by the Head of the Contracting Activity. Prior to approving significant changes, the Head of the Contracting Activity shall obtain concurrence from the Director of the Procurement Strategic Operations Division.

(B) Significant changes to Center approved acquisition plans shall be approved at the same level as the original acquisition plan.

[PN 21-01, PN 22-03, PN 22-12, PN 22-14, PN 23-06]

1807.104 General procedures.

(a) The acquisition planning team shall obtain input from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, earned value management, small business, and security to ensure that all NASA acquisitions are structured in accordance with NASA policy in these areas. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, property management, earned value management, small business, and security concerns. (See NPR 8715.3, NASA General Safety Program Requirements; NPR 7120.5, NASA Space Flight Program and Project Management Requirements; NPR 4500.1 Administration of Property in the Custody of Contractors; NPR 2810.1, Security of Information Technology, NPD 5000.2, Small Business Subcontracting Goals and NPR 1600.1, NASA Security Program Procedural Requirements).

(b) For an acquisition $50 million or greater, the acquisition planning team shall obtain input from the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement, relative to the key concepts and issues of the procurement

strategy, for example the topics summarized within the executive summary portion of the charts for the procurement strategy meeting, for acquisition plans prepared in accordance 1807.103.

[PN 21-01]

1807.105 Contents of written acquisition plans.

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR**.** Procurement strategy meetings (PSMs) held at Headquarters shall follow the FAR and NFS. Additional guidance for Headquarters PSMs is in the Guide for Successful Headquarters Procurement Strategy Meetings. Subheadings should be used when appropriate (e.g., the separate items under acquisition considerations at FAR 7.105(b)(5)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A. The requirements in FAR 7.105 regarding the strategies for implementing performance-based acquisition methods shall be described, to include the specific performance standards, results and financial incentives.

(a) *Acquisition background and objectives*.

(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities. Provide a technical and contractual history of the acquisition that includes the knowledge gained and lessons learned from the prior or predecessor contract(s) to further refine acquisition requirements, strategies, and mitigate issues, if any, in the follow-on acquisition. Address feasible acquisition alternatives, such as greater use of performance based acquisitions for services.

(2) NPR 7120.5 shall be an integral part of acquisition planning for programs and projects subject to its requirements. If the NPR does not apply, the acquisition plan shall clearly state that fact. If the NPR does apply, specify whether all required NPR 7120.5 documentation is current and approved. If not, describe the approach for obtaining approval or the authority to proceed without approval before release of draft or final solicitations. For programs and projects under the NPR, all draft or final solicitations subject to, or directly or substantially in support of, those programs or projects shall clearly identify the program or project of which they are part.

(3) Provide the independent government cost estimate (IGCE). The IGCE should identify the estimated cost and describe the estimating methodology, to include detailed cost estimates with sources of cost estimates, assumptions, and supporting rationale.

(5) Specify the delivery or performance period requirements separately by the basic contract, each option, and the total. Provide supporting rationale, which describes the relationship between the technical requirements and the proposed period of performance, including the basis for the decision regarding duration and the appropriateness of the inclusion of options.

(7) Discuss project/program risks (see NPR 7120.5, NASA Space Flight Program and Project Management Requirements). In addition to technical, schedule, and cost risks, the discussion shall include the following if applicable to the acquisition: safety, occupational health,

environmental and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPD 2190 and Export Control Program); organizational conflicts of interest; funding; and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (e.g., high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b) *Plan of action*.

(1) Discuss considerations, in coordination with Agency and Center CFO, CIO, OSBP, or other program offices as necessary, given to the use of-

(i) Enterprise procurement strategies (see Appendix A – Enterprise Procurement Strategies).

(ii) NASA Strategic Sourcing Initiatives (NSSI), including the Enterprise License Management Team Program (see subpart 1807.70 and the Office of Procurement Strategic Sourcing Searchable Repository) (see subpart 1805.70).

(iii) Annual forecasted contracts which can be found at the NASA's Acquisition Forecast website.

(iv) Existing governmentwide contracting opportunities, such as Best-in-Class (BIC) solutions, Government-wide acquisition contracts (GWACs) and Federal Strategic Sourcing Initiatives (FSSI).

(v) Other potential sources. If use of a source other than the above is planned, address why none of the contracting opportunities identified in (i) – (iv) are suitable for the acquisition (e.g., required product/service and/or contract type not available on existing BICs, GWACs or other governmentwide contracts; better pricing and/or terms/conditions exist elsewhere; small business considerations; excessive fees, etc.).

(2)(iv) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR part 19, part 1819, and NPD 5000.2 Small Business Subcontracting Goals.)

(3)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects. Explain the benefits achieved from using the planned incentive type contract and how this type of contract will outweigh the costs and resources associated with administering the incentive contract. Consider the incentive and award fee data collected in the Contractor Performance Assessment Reporting System (CPARS) and the Award Fee Evaluation System (AFES) when selecting the appropriate contract type. Consider whether the incentives were effectively used in prior similar types of contracts and did the incentives used achieve the desired outcomes and help to ensure successful contract performance (see FAR 16.401(f) and NFS 1842.1503(b)).

(B) If a cost type contract is contemplated, address the actions planned to minimize the use of other than a firm-fixed-price contract or transition to a firm-fixed-price contract type in the follow-on acquisition of similar efforts or requirements. (See FAR 16.103(d)).

(4) Discuss the source selection approach (full trade-off, lowest price technically acceptable (LPTA), price performance tradeoff (PPTO), or combination of approaches) and the rating method (numerical scoring, acceptable/unacceptable, adjectival ratings and definitions) to be used. Explain how it will be used and why it is expected to result in the selection of the best value to NASA. Identify all factors and their relative importance to one another and explain how this approach will allow for selection of the offeror(s) providing the best value. To the extent subfactors are utilized under any of the factors, identify the relative importance of each subfactor to one another under the specific factor. (See FAR 15.101 and NFS 1815.101.) Address how cost realism will be evaluated. Address, as applicable, required enterprise procurement strategy source selection approaches - see Appendix A – Enterprise Procurement Strategies.

(5)(i) Address and substantiate the use of options; any special or unique clauses; and any FAR or NFS deviations that are required for the specific acquisition. Address requirements of FAR 7.105(b)(5)(i) when performance-based acquisition is not used. In coordination with Agency, Center, other program offices, and finance offices, as appropriate, discuss the structure of the contract line item(s) (see FAR 4.1001).

(iii) Discuss whether the acquisitions will include any IT systems and address the IT Security Standards required by FAR 39.101(d). (See NPR 2810.1).

(6)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by Government fiscal year and NASA Structure Management project number.

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(D) Discuss relevant severability issues consistent with the program/project budget plan, to include identifying type of appropriation and funding of the severable or non-severable services (e.g., annual or multi-year appropriations; fully funded or incremental funding at the contract level, task level, or by contract line-item number (CLIN).)

(7) Identify the type of work statement/specification planned. Specifically address the applicability of performance work statements and the availability of commercial sources for the supplies/services.

(11) As appropriate, identify the management system(s) that will be utilized to monitor contractor's performance. Identify how earned value data, reports, reviews, and deliverables (e.g., data requirements descriptions (DRDs)) will be used to monitor contractor's performance.

(19) Address contract administration issues, including —

(A) Planned delegations of administrative functions.

(B) When contract changes are anticipated, discuss the plan to manage such changes and the specific measures that will be taken to minimize the issuance of undefinitized contract actions.

(C) When it is anticipated that there will be a follow-on award for similar efforts or requirements to the instant acquisition, which will result in the award of a non-commercial, fee bearing, cost-reimbursement contract and for which the follow-on award may be delayed (i.e. protest), discuss the potential impacts that a delay in awarding the follow-on contract would have on the successful completion of agency requirements (e.g., potential costs to the agency associated with delays in implementing new mission critical requirements, potential costs to the agency associated with delays in achieving critical path milestones, increased costs to the agency that impact the agency's ability for new requirements to be completed).

(1) If it is determined that the follow-on award would be adversely impacted by a delay, contracting officers shall contact the Director, Headquarters Office of Procurement, Procurement and Grant Policy Division for further guidance.

(D) Consideration of on-ramp provisions, enabling additional contractors to be added in the future, if a multiple award contract is contemplated.

(E) Identify and list all applicable agency-wide data requirements descriptions and requirement statements (see Appendix C – Data Requirements Descriptions and Requirements Statements).

(21) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal source selection competitions), explain why that goal cannot be met.

[PN 18-04, PN 18-09, PN 19-11, PN 19-12, PN 19-13, PN 20-07, PN 21-01, PN 21-05]

1807.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

1807.107-2 Consolidation.

(a) The contracting officer shall submit requests for approval of the determination to consolidate requirements with an estimated total dollar value exceeding the threshold cited in FAR 7.107-2(a) using the Determination and Findings for Consolidation of Requirements template to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(b) The Senior Procurement Executive will make the required determination.

(e)(2)(ii) The request for approval of a proposed consolidation that meets the requirements at FAR 7.107-2(e)(1)(i) and (ii) must be approved by the Associate Administrator for the Mission Support Directorate. The contracting officer shall submit requests using the Determination and Findings for Consolidation of Requirement template to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

[PN 18-16]

1807.107-3 Bundling.

(f)(2)(ii) Requests for approval of proposed bundling that does not meet the thresholds in FAR 7.107-3 must be approved by the Associate Administrator for the Mission Support Directorate. The contracting officer shall submit requests using the Determination and Findings for Bundled Requirements template to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

1807.107-4 Substantial bundling.

(a)(ii) The substantial bundling documentation requirements apply to each proposed NASA bundling action expected to exceed $6 million. The contracting officer must forward the documentation along with the measurable benefits analysis required by FAR 7.107-3 to the Headquarters Office of Procurement, Procurement Strategic Operations Division in sufficient time to allow a minimum of 10 days for review.

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

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

[PN 18-16]

1807.107-71 Procurement Strategy Meeting (PSM).

(a) The PSM is an acquisition plan conducted through a meeting attended by all interested NASA offices. The Guide for Successful Headquarters Procurement Strategy Meetings (PSMs) should be followed. For Headquarters PSMs, the charts should be submitted to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement, at least 5 working days prior to the scheduled meeting date. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decisions, actions, and conclusions of the PSM members. The approved minutes, along with the briefing charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The PSM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Rationale for proposed deviations should be addressed in the PSM. Deviations addressed in the proposed acquisition strategy should be submitted to the cognizant Procurement Strategic Operations Procurement Division Analyst in Headquarters' Office of Procurement.

(d) Headquarters PSMs will be chaired by the Senior Procurement Executive or designee. The Headquarters Office of Procurement, Procurement Strategic Operations Division will prepare the minutes of Headquarters PSMs and distribute them for review, as appropriate, prior to approval by the PSM chairperson.

(e) For field installation PSMs, the minutes shall be approved in accordance with installation procedures.

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for a significant savings, it should be transmitted immediately.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy.

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.

Subpart 1807.70—IT Products and Services

1807.7000 Policy.

In accordance with the Federal Information Technology Acquisition Reform Act (FITARA), Section 831 Chief Information Officer (CIO) Authority Enhancements, provides statutory authority to the CIO in the planning, programming, budgeting, and execution of all IT acquisitions. The Act requires CIO review and approval for major IT investments, and CIO or CIO Delegate review and approval for non-major IT investments, prior to award of any contract or agreement. As a result, requiring offices, contracting officers, and Governmentwide commercial purchase cardholders shall receive authorization from the CIO or designee for all IT hardware, software, and service acquisitions regardless of contract vehicle (e.g., purchase order, contract, or task order against an existing contract), NAICS code (i.e., all NAICS codes including non-IT NAICS codes), or dollar value, including value of $0. No IT shall be purchased without the Office of the Chief Information Officer (OCIO) authorization.

1807.7001 Authorizing IT Acquisition.

The Requiring Office shall obtain Office of the Chief Information Officer (OCIO) authorization by utilizing the application on the following Acquisition Navigator IT Products and Services webpage. OCIO authorization shall be obtained prior to sending a purchase request to the contracting officer or Governmentwide commercial purchase card holder. Contracting officers and Governmentwide commercial purchase cardholders shall ensure that the OCIO authorization for IT purchases is included in the purchase request. Upon receipt of the purchase request, requiring offices, contracting officers, and Government commercial purchase cards holders shall adhere to Appendix A-102.2, Procuring Information Technology (IT).

1807.7002 File documentation.

(a) The contracting officer shall document the contract file that the requiring office has obtained the OCIO authorization for the IT purchase.

[PN 24-09]

Subpart 1807.71—Procurement Administrative Lead Time Tracking

1807.7100 Policy.

Section 878 of the National Defense Authorization Act (NDAA) of 2019 defined Procurement Administrative Lead Time (PALT) as the amount of time between the date on which an initial solicitation for a contract or order is issued to the date of award of the contract or order. PALT submissions are tracked and managed through an Internet-based tool known as the Procurement Administrative Lead Time+ site (PALT+). The PALT+ provides information on planned acquisitions and visibility into PALT timelines providing management insight into acquisitions above the simplified acquisition threshold across NASA programs. PALT+ data is used to support other Agency planning activities, including the monthly Baseline Performance Review (BPR).

[PN 21-01]

1807.7101 Applicability.

(a) PALT+ applies to:

(1) New contract actions, task orders, delivery orders, letter contracts, interagency acquisitions, blanket purchase agreements, and all Broad Agency Announcements (BAAs) to include, Announcement of Opportunities (AOs), NASA Research Announcements (NRAs), Cooperative Agreement announcements (CANs), and other forms of announcements (see 1835.016(a)(i)) where the dollar value, including the aggregate amount of options, or later phases of multi-phase acquisitions, is expected to equal or exceed the simplified acquisition threshold.

(2) All undefinitized contract actions.

(3) Supplemental agreements containing new work, a debit change order, or a credit change order, or any combination/consolidation thereof, if the absolute value of the actions is $50 million or greater (e.g., the absolute value of a supplemental agreement adding $30,000,000 of new work and deleting $30,000,000 of work is $60,000,000, and is therefore subject to the PALT+.

(b) The PALT+ does not apply to incremental funding actions or the exercising of options.

[PN 18-09, PN 19-12, PN 21-01]

1807.7102 Submission procedures.

(a) Each installation shall submit a record in the PALT+ site for every known acquisition that meets the criteria in 1807.7101. The PALT+ record shall be entered at the earliest stages of "acquisition planning", as defined in FAR 2.101. As such, the record shall be created upon issuance of the letter requesting the appointment of the Requirements Development Team (RDT). If an RDT is not required, the record shall be created prior to the development of an acquisition plan or strategy or Justification for Other Than Full and Open Competition (JOFOC)/Limited Sources Justification. The PALT+ is a living database and should be updated continually to identify upcoming acquisitions.

(b) Installations are required to maintain current status information for all PALT+ records until the award data is entered into the PALT+ site and the protest period has expired.

[PN 18-04, PN 21-01]

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).

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).

1807.7202 Responsibilities.

NASA procurement officers shall provide the data required by 1807.7203 to the Headquarters Office of Procurement, Procurement Strategic Operations Division not later than September 1 for the annual forecast and March 1 for the semiannual update. Prior to submitting the data to the HQs Office of Procurement, the procurement officers shall coordinate with the Office of Small Business Programs related to potential socio-economic preference. Along with this data, NASA procurement officers shall include a statement that a review was conducted of the existing NASA contracts that are available for other Centers to use as identified on the Office of Procurement Strategic Sourcing Searchable Repository. See 1808.004 for information on use of other sources.

[PN 18-04, PN 23-17]

1807.7203 Forecast data.

(a) The annual forecast shall identify all known contract opportunities in excess of the simplified acquisition threshold. Each such action should be identified as one of the four broad categories of acquisitions: Construction (including A&E), Research and Development, Services, or Supplies (including equipment) and shall include the elements outlined on the NASA Acquisition Forecast web page under data definitions.

(b) The semiannual report shall be an update of the data provided by the annual forecast. This update should provide information on new requirements not previously reported and on changes in data related to actions previously identified.

PART 1808
REQUIRED SOURCES OF SUPPLIES AND SERVICES

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PART 1808
REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.003 Use of other mandatory sources.

1808.003-70 Acquisition of radioisotopes.

(a) U.S. Department of Energy Isotope and Technical Service Order Form CA-10-90.COM, and U.S. Nuclear Regulatory Commission Application for Material License, NRC Form 313, shall be used to acquire radioisotopes.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form CA-10-90.COM (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) NRC Form 313 and DOE Form CA-10-90.COM may be requisitioned directly from the United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

(d) Isotope program guidance is available from DOE.

1808.003-71 Acquisition of helium, hydrogen, nitrogen, oxygen, other propellants and aerospace fluids.

See Appendix A, A-102.1 for policy related to the acquisition of helium, hydrogen, nitrogen, oxygen, other propellants and aerospace fluids.

[PN 19-12]

1808.003-72 NASA Strategic Sourcing Initiative.

[PN 18-04]

1808.003-7201 Policy.

Requiring offices and contracting officers shall follow the guidance at 1808.004 and Governmentwide commercial purchase cardholders shall follow the guidance at 1813.301 to make use of the existing NASA contracts that are available for use by other Centers to satisfy

requirements for supplies and services. The use of NASA contracts that are available for use by other Centers allows NASA to obtain favorable terms and pricing for supplies and services as described in the Office of Procurement Strategic Sourcing Website.

[PN 18-04]

1808.003-7202 Purchase request.

Prior to submitting a purchase request, the requiring activity shall review the existing NASA contracts that available for use by other Centers as identified on the Office of Procurement Strategic Sourcing Searchable Repository to determine if the requirement is available through the NASA Strategic Sourcing Initiative.

[PN 18-04]

1808.003-73 Acquisition of mercury.

(a) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Mercury Contract Specialist, Directorate of Stockpile Contracts, DLA, Defense National Stockpile Center, 8725 John J. Kingman Rd., #3339, Ft. Belvoir, VA 22060-6223. DLA will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(b) Requests for clearance to purchase quantities of 76 pounds or more from sources other than DLA shall be submitted to the office in paragraph (a) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

1808.004 Use of other sources.

(a)(1)(A) For requirements for supplies or services that cannot be satisfied from the mandatory sources listed at FAR 8.002 and 8.003, contracting officers shall follow the below order of preference in order to obtain favorable terms and pricing for supplies and services, and support achievement of NASA's small business and strategic sourcing goals:

(1) The enterprise procurement strategies identified in Appendix A.
(2) Existing NASA contracts identified as available for use by other Centers on the NASA Office of Procurement Strategic Sourcing Searchable Repository.
(3) Best in Class (BIC) solutions. BICs can be identified using the Best-in-Class Research Tool.
(4) Multi-agency contracts, Government-wide Acquisition Contracts (GWACs) or Federal Supply Schedules. Multi-agency contracts and GWACs can be identified using the Solutions Finder. For schedules, visit the GSA eLibrary or list of schedule offerings.

(5) Commercial sources (including educational and non-profit institutions) in the open market.

(B) For situations (e.g., immediacy of need, availability of better pricing elsewhere, etc.) that do not warrant the use of the contracts designated as mandatory by the enterprise strategies in Appendix A for satisfying requirements within the scope of those contracts, the contracting officer shall prepare and submit a request for deviation for approval by the Senior Procurement Executive in accordance with 1801.471.

[PN 18-04, PN 19-12, PN 20-07]

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA Equipment Management System (NEMS) Coordinator.

Subpart 1808.4—Federal Supply Schedules

See PCD 14-01 for further guidance related to FAR 8.404.

1808.404 Use of Federal Supply.

(h)(3)(ii)(A) The contracting officer shall use the Time and Materials and Labor Hour Contract/Order Determination and Findings template.

1808.405 Ordering Procedures for Federal Supply Schedules.

1808.405-3 Blanket purchase agreements (BPAs)

(a)(3)(ii) The authority to make the determination to award a single-award BPA with an estimated value exceeding $100 million, is delegated to the Senior Procurement Executive. Requests for approval of this determination shall be submitted through the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(c) The limitations in 1813.303-3(a)(4) on the individuals authorized to purchase under a BPA apply to BPAs established under Federal Supply Schedule contracts.

1808.405-6 Limiting sources.

(c)(1) The contracting officer shall use the Limited Sources Justification (LSJ) General Services Administration (GSA) Federal Supply Schedule (FSS) template to document the file for proposed orders or BPAs estimated to exceed the simplified acquisition threshold based on a limited sources justification or restricting consideration to an item peculiar to one manufacturer.

Subpart 1808.6—Acquisition from Federal Prison Industries, Inc.

1808.602 Policy.

(d) When disputes occur, the contracting officer shall refer the matter to the Senior Procurement Executive, through the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement, for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

1808.604 Waivers.

(a) NASA purchase orders or contracts written pursuant to a general or blanket waiver need not be supported by a copy of the waiver, but the waiver number must be cited on the purchase order or contract as well as on the initial voucher. A copy of the waiver certificate must be attached to the initial voucher.

Subpart 1808.7—Acquisition from Nonprofit Agencies Employing People Who are Blind or Severely Disabled

1808.705 Procedures.

1808.705-1 General.

The Federal Standard Requisitioning and Issue Procedure (FEDSTRIP) shall be used to obtain nonprofit agency-produced supplies from GSA supply distribution facilities. The FEDSTRIP Operating Guide is available here.

(c) The potential use of AbilityOne shall be considered during the market research phase of acquisition planning. Contracting Officers shall initiate coordination with AbilityOne, as early as possible. Where indicated in Appendix A, use of AbilityOne is an allowable exception to the enterprise procurement strategies detailed therein.

(d) For the AbilityOne service requirements, listed by North American Industry Classification System (NAICS), located at AbilityOne Product and Services the contracting officer shall perform the following steps:

(i) Contact the AbilityOne Program at opportunity@abilityone.org to discuss the feasibility of adding the requirement to the Procurement List in accordance with FAR 8.705-3. In the correspondence include a completed version of the AbilityOne Coordination Template.

(ii) 41 CFR § 51-2.4 prohibits transitioning requirements to AbilityOne if the transition would cause a severe adverse impact to the incumbent contractor(s). Accordingly, an AbilityOne Certified Nonprofit Agency (CNA) will perform a preliminary impact assessment to determine if the requirement can be transitioned to AbilityOne without severe adverse impact.

(iii) If a requirement is determined not suitable for AbilityOne due to severe adverse impact or the comprehensive nature of the requirement (i.e., AbilityOne can only perform a portion of the requirement), contracting officers shall consider including AbilityOne subcontracting goals in the resultant solicitation for the requirement.

(iv) If the preliminary impact assessment indicates AbilityOne can perform the requirement and transitioning it would not cause severe adverse impact to the incumbent, the CNA will coordinate a formal capability presentation to NASA. If requested, the CNA can also coordinate a capability presentation(s) by one or more NPAs. The contracting officer shall ensure appropriate representatives from the Center Office of Procurement and the requiring/technical activity, as well as the NASA AbilityOne Representative (ABOR), are invited to attend. At the capability presentation, the CNA or NPA(s) will present its understanding of the technical requirements and demonstrated past success in meeting the specific requirements of the type to be performed under the contemplated contract on schedule.

(v) If the capability presentation successfully demonstrates that AbilityOne can perform the requirement, the contracting officer shall provide a solicitation/draft contract and negotiate price and other terms and conditions with the NPA and the CNA. Following agreement on a fair market price/cost, the CNA shall coordinate addition of the requirement to the Procurement List (PL) by the AbilityOne Commission. The contracting officer may proceed with contract award upon confirmation of the PL addition from the CNA.

[PN 21-06]

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.

(b)(i) The Headquarters Chief Information Officer is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to the Office of Chief Information Officer. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000.

(B) The order is not of a continuing or repetitive nature.
(C) The Public Printer certifies it cannot be provided more economically through the GPO.

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.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NPD 6000.1, Transportation Management.

PART 1809
CONTRACTOR QUALIFICATIONS

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PART 1809
CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

1809.104-4 Subcontractor responsibility.

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

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

1809.105-1 Obtaining Information.

(b)(3)(A) NASA's most significant contracts for design and development programs and projects, with a lifecycle cost of $500 million or more, or otherwise designated by the NASA Associate Administrator, require a financial capability assessment prior to award. The financial capability assessment will be conducted by the NASA Headquarters Office of the Chief Financial Officer (HQ OCFO) and provided to the contracting officer for consideration as part of the responsibility determination required by FAR 9.104. Contracting officers shall not make award until the financial capability assessment is completed and considered as part of the responsibility determination.

(B) Proposal Instructions. For solicitations related to a significant contract for design and development programs and projects, with a lifecycle cost of $500 million or more, or otherwise designated by the NASA Associate Administrator, contracting officers shall include the Financial Capability Assessment requirements statement at Appendix C, Data Requirements Descriptions and Requirement Statements in the solicitation.

(C) Upon release of a solicitation for a significant contract for design and development programs and projects, with a lifecycle cost of $500 million or more, or that has been otherwise designated by the NASA Associate Administrator, the contracting officer shall provide the following information to the HQ OCFO Financial Capability Assessment Team:

(1) Solicitation number,
(2) Solicitation name,
(3) Brief description of the work to be performed under the contract,
(4) The estimated value of the contract,
(5) The anticipated number of proposals expected to be received, and
(6) The proposal due date.

(D) Upon receipt of the proposals, the contracting officer shall provide the HQ OCFO Financial Capability Assessment Team with a list of the offerors and the financial assessment information provided by each offeror.

[PN 20-05, PN 22-04]

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.

1809.106 Preaward surveys.

1809.106-1 Conditions for preaward surveys.

(a) The procurement officer shall approve all preaward survey requests.

1809.106-2 Requests for preaward surveys.

(a) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

1809.106-3 Interagency preaward surveys.

If the survey will be performed for NASA by a DOD contract administration office, the SF 1403 request is to be sent to the appropriate office shown in the Federal Directory of Contract Administration Services Components, 2.0, Attn: Preaward Survey Manager. The DOD contract administration offices normally allow 30 working days in which to conduct a full survey and submit the report to the requesting agency. Allow more time for—

(i) Complex items;

(ii) New or inexperienced contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

Only request those factors essential to the determination of responsibility. See FAR 53.209-1 and DFARS 253.209-1(a) for detailed explanation of the factors in Section III, Blocks 19 and 20 of the SF 1403.

1809.106-70 Preaward surveys performed by NASA personnel.

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require

clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

Subpart 1809.2—Qualifications Requirements

1809.202 Policy.

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests to proceed with the procurement shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's and QBL's.

1809.203-70 Waiver of qualification requirements.

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR Subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206-1 General.

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a nonemergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance.

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

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 "debarring official," the "suspending official," and the agency head's "designee."

1809.404 Excluded Parties List Systems.

(c) The Director, Headquarters Acquisition Integrity Program (AIP Director) is responsible for taking the actions listed in FAR 9.404(c).

1809.405 Effect of listing.

(a) The NASA Chief Acquisition Officer (CAO) is the NASA official responsible for determining that a compelling reason exists for NASA to conduct business with a contractor that is debarred, suspended, or proposed for debarment. If it is believed that a new contract or subcontract must be awarded to a firm included in the Excluded Parties List System (EPLS), the procurement officer shall prepare a request for a determination, including the rationale for why the action should be taken, together with all necessary supporting information and forward it to the Headquarters Office of Procurement, Procurement Strategic Operations Division, and provide a copy to the AIP Director.

(b) The Headquarters Office of Procurement, Procurement Strategic Operations Division is responsible for evaluating the request and coordinating with Procurement, OGC (both AIP and Contracts Procurement Practice Group (CPPG)), to jointly determine whether the facts support a recommendation for the CAO to approve award to a party on the EPLS. Procurement Operations Division is also responsible for preparing the headquarters documentation and providing it to the CAO for approval.

1809.405-1 Continuation of current contracts.

The responsibilities of the Agency head under FAR 9.405-1 are delegated to the CAO. Approvals shall be requested in accordance with the procedures in 1809.405.

1809.405-2 Restrictions on subcontracting.

(a) The responsibilities of the Agency head under FAR 9.405-2(a) are delegated to the CAO. Approval of consent to subcontract shall be requested in accordance with the procedures in 1809.405.

1809.406 Debarment.

1809.406-1 General.

1809.406-3 Procedures.

See PCD 20-01 for further guidance related to FAR 9.406-3.

(a) Any person may refer a matter to the Suspending and Debarring official (SDO) when there is information indicating that a contractor may lack business integrity or business honesty. The information should be referred promptly to the SDO, through the AIP Director, for consideration. The referral should contain the information which supports a lack of business integrity or business honesty.

(1) Use the following format when referring a matter to the SDO for consideration. To the extent practicable, provide all specified information.

(A) Name, address and telephone number of the point of contact for the activity making the report.

(B) Name, contractor and Government entity (CAGE) code, DUNS number, and address of the contractor.

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers.

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship.

(E) For each contract affected by the conduct being reported—

(i) The contract number;

(ii) All office identifying numbers or symbols;

(iii) Description of supplies or services;

(iv) The amount;

(v) The percentage of completion;

(vi) The amount paid the contractor and any amounts due;

(vii) Status of invoices or vouchers;

(viii) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(ix) The contract fund citations involved, to expedite accurate return of funds to open accounts and commands, as appropriate.

(F) For any other contracts with the contractor or any of its affiliates—

(i) The contract number;

(ii) The amount;

(iii) The amounts paid the contractor;

(iv) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(v) The amount due the contractor.

(G) A complete summary of the facts, including all pertinent evidence and the status of any legal proceedings involving the contractor.

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).

(I) If a contracting office initiates the report, the comments and recommendations of the contracting officer and of each higher-level contracting review authority regarding—

(i) Whether to suspend or debar the contractor;

(ii) Whether to apply limitations to the suspension or debarment;

(iii) The period of any recommended debarment; and

(iv) Whether to continue any current contracts with the contractor (or explain why a recommendation regarding current contracts is not included).

(J) When appropriate, as an enclosure to the report—

(i) A copy or pertinent extracts of each pertinent contract;

(ii) Witness statements or affidavits;

(iii) Copies of investigative reports when authorized by the investigative agency;

(iv) Certified copies of indictments, judgments, and sentencing actions;

(v) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1);

(vi) A copy of the information from the Federal Awardee Performance and Integrity Information System (FAPIIS) data base; and

(vii) Any other appropriate exhibits or documentation.

(K) To the extent that information is available through FPDS-NG, provide a list of other agencies that hold current contracts with the subjects.

(L) The Contracting Officer is responsible for gathering the information required and preparing the report.

(M) The AIP Center Attorney (AIP-C) is responsible for assisting the contracting officer in preparing the report and performing a legal sufficiency review. The AIP-C shall sign the report indicating that the review has been performed.

(N) The report shall be signed by the Contracting Officer and submitted by the procurement officer. Procurement officers are encouraged to advise the Center Director, as appropriate, of debarment recommendations provided to the SDO.

(O) Address the recommendation to the SDO, indicating OGC (AIP) on the 'Attention' line, and send 2 copies of the complete report, including enclosures to OGC (AIP). One copy of the recommendation, without enclosures, should be provided to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

(P) If a referral lacks sufficient evidence of a cause for debarment, the SDO may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) Decision-making process.

(1) The agency SDO may initiate the debarment process by issuing a notice of proposed debarment in accordance with FAR 9.406-3(c) when the SDO finds that the administrative record contains sufficient evidence of one or more of the causes for debarment stated in FAR 9.406-2 .

(i) The absence of a referral in accordance with 1809.406-3(a), or the absence of any information specified in the report format at 1809.406-3(a)(1), will not preclude the SDO from making such a finding.

(ii) The signature of the SDO on the notice of proposed debarment is sufficient evidence that the SDO has made such a finding.

(2) The SDO must use the decision-making process stated in FAR 9.406-3(b), and any agency-specific procedures that were provided to the contractor in advance of the decision.

(3) Nature of proceeding. There are two distinct proceedings which may be involved in the suspension or debarment process. The first is the presentation of matters in opposition to the suspension or proposed debarment by the contractor. The second is fact-finding which occurs only in cases in which the contractor's presentation of matters in opposition raises a genuine dispute over one or more material facts. In a suspension action based upon an indictment or in a proposed debarment action based upon a conviction or civil judgment, there will be no fact-finding proceeding concerning the matters alleged in the indictment, or the facts underlying the convictions or civil judgment. However, to the extent that the proposed action stems from the contractor's affiliation with an individual or firm indicted or convicted, or the subject of a civil judgment, fact-finding is permitted if a genuine dispute of fact is raised as to the question of affiliation as defined in FAR 9.403.

(4) Presentation of matters in opposition. In accordance with FAR 9.406-3(c) and 9.407-3(c), matters in opposition may be presented in person, in writing, or through a representative. Matters in opposition may be presented through any combination of the foregoing methods, but if a contractor desires to present matters in person or through a representative, any written material should be delivered at least 5 working days in advance of the presentation. Usually, all matters in opposition are presented in a single proceeding. A contractor who becomes aware of a pending indictment or allegations of wrongdoing that the contractor believes may lead to suspension or debarment action may contact the SDO or designee to provide information as to the contractor's present responsibility.

(i) An in-person presentation is an informal meeting, nonadversarial in nature. The SDO and/or other Agency representatives may ask questions of the contractor or its representative making the presentation. The contractor may select the individuals who will attend the meeting on the SDO and contractor's behalf; individual respondents or principals of a business firm respondent may attend and speak for themselves.

(ii) In accordance with FAR 9.406-3(c) and 9.407-3(c), the contractor may submit matters in opposition within 30 days from receipt of the notice of suspension or proposed debarment.

(iii) The opportunity to present matters in opposition to debarment includes the opportunity to present matters concerning the duration of the debarment.

(5) Fact-finding.

(i) The SDO will determine whether the contractor's presentation has raised a genuine dispute of material fact(s). If the SDO has decided against continued suspension or debarment, or the provisions of FAR 9.4 preclude fact-finding, no fact-finding will be conducted. If the SDO has determined a genuine dispute of material fact(s) exists, a designated fact-finder will conduct the fact-finding proceeding. The proceeding before the fact-finder will be limited to a finding of the facts in dispute as determined by the SDO.

(ii) The designated fact-finder will establish the date for a fact-finding proceeding, normally to be held within 45 working days of the contractor's presentation of matters in opposition. An official record will be made of the fact-finding proceeding.

(iii) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative in the fact-finding proceeding.

(iv) Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(v) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceeding and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination.

(6) Timing requirements. All timing requirements set forth in these procedures may be extended by the SDO for good cause.

(c) Notice of Proposal to Debar.

(1) Notification. Contractors will be notified of the proposed suspension or debarment in accordance with FAR 9.406-3 or 9.407-3. A copy of the record which formed the basis for the decision by the SDO will be made available to the contractor. If there is a reason to withhold from the contractor any portion of the record, the contractor will be informed of what is withheld and the reasons for such withholding.

(2) Written findings of fact will be prepared by the fact-finder as mandated by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i).

(3) The fact-finder will determine the disputed fact(s) by a preponderance of the evidence. A copy of the findings of fact will be provided to the SDO, the Government's representative, and the contractor.

(4) The SDO will determine whether to continue the suspension or to debar the contractor based upon the entire administrative record, including the findings of fact.

(5) Prompt written notice of the SDO's decision will be sent to the contractor and any affiliates involved, in compliance with FAR 9.406-3(e) and 9.407-3(d)(4).

1809.407 Suspension.

1809.407-1 General.

1809.407-3 Procedures.

See PCD 20-01 for further guidance related to FAR 9.407-3.

(a) Any person may refer a matter to the SDO. Refer all matters appropriate for consideration by the SDO as soon as practicable. Use the format and procedures at 1809.406-

3(a)(1) when referring a matter to the agency SDO for consideration. To the extent practicable, provide all information specified.

(i) If a referral lacks sufficient evidence of a cause for suspension, the SDO may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) Decision-making process.

(1) The agency SDO may initiate the suspension process by issuing a notice of suspension in accordance with FAR 9.407-3(c) when the SDO finds that the administrative record contains sufficient evidence of one or more of the causes for suspension stated in FAR 9.407-2. The SDO should coordinate with appropriate agency offices to assess the impact of suspension or debarment on agency mission.

(i) The absence of a referral in accordance with 1809.407-3(a), or the absence of any information specified in the report format at 1809.406-3(a)(1), will not preclude the SDO from making such a finding.

(ii) The signature of the SDO on the notice of suspension is sufficient evidence that the SDO has made such a finding.

(2) In deciding whether to terminate a suspension following a submission of matters in opposition, the agency SDO must use the decision-making process stated in FAR 9.407-3(b),and any agency-specific procedures that were provided to the contractor in advance of the decision.

(3) The SDO shall follow the procedures in 1809.406-3(b) and 1809.406-3(c).

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2)(A) If the offeror indicates that it currently is or has been indicted, charged, convicted, or had a civil judgment rendered against it, or has been suspended, proposed for debarment, or has entered into an administrative agreement to resolve a suspension or debarment proceeding, or when information in FAPIIS indicates cause for concern, the contracting officer shall immediately notify the Director, Headquarters Acquisition Integrity Program, with a copy to the Headquarters Office of Procurement, Procurement Strategic Operations Division, providing details as known. Information provided should include—

(i) Copy of the offeror's certification;
(ii) Specific company name or division;
(iii) Purpose of the pending acquisition;
(iv) Description of services; and
(v) Extent of competition on the pending procurement.

The contracting officer shall await a response before awarding the contract. The Headquarters Office of Procurement, Procurement Strategic Operations Division is responsible for working with the contracting officer to ensure that the package is complete.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Director, Headquarters Acquisition Integrity Program, with a copy to the Headquarters Office of

Procurement, Procurement Strategic Operations Division, in accordance with 1809.406-3 and 1809.407-3.

1809.470-2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(j) Recommendation as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, (3) whether current contracts should be terminated, and (4) the period of any debarment.

(k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.

(a) The Assistant Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR Subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

(b) The NASA Organizational Conflict of Interest (OCI) Guide provides agency-wide guidance to individuals relative to identifying as well as resolving OCIs.

1809.503 Waiver.

The Administrator has designated the Senior Procurement Executive as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 through the Office of Procurement, Strategic Operations Division to the Senior Procurement Executive for action.

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, interrelated 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.

1809.506 Procedures.

(b) Contracting Officers shall use the agency-wide Organizational Conflicts of Interest – Limitation of Future Contracting Memo template when taking the actions described in FAR 9.506(b). The approving official is the procurement officer when the installation has source selection authority and the Senior Procurement Executive when NASA Headquarters has that authority. The procurement officer shall forward request for approval by the Senior Procurement Executive to the Office of Procurement, Strategic Operations Division.

(d)(2) When requesting an organizational conflicts of interest (OCI) plan from prospective contractors, contracting officers shall include the agency-wide OCI plan data requirements description (see Appendix C – Data Requirements Descriptions and Requirements Statements) in solicitations and contracts. Contracting officers shall use the agency-wide OCI Determination Memorandum and Checklist template when considering additional information provided by prospective contractors.

[PN 21-05]

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.

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PART 1810
MARKET RESEARCH

1810.002 Procedures.

(e) For procurements exceeding the simplified acquisition threshold (SAT), the contracting officer shall document the results of their market research utilizing NASA Form (NF) 1787A. For procurements under the SAT, use of the NF 1787A is optional for documenting the results of market research.

[PN 22-05]

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PART 1811
DESCRIBING AGENCY NEEDS

1811.002 Policy.

(a)(2) The Requirements Development Team (RDT) plays a critical role in setting the course for the acquisition. The RDT is responsible for completing key milestones to advance the acquisition from benchmarking to completion of a complete requirements package. The RDT will also work together with the Center procurement office and/or Source Evaluation Board (SEB) to prepare the procurement strategy and finalize other required documentation supporting the acquisition.

(3) The Agency-wide Requirements Development Team Request & Appointment Letters template shall be used for the formal appointment of the RDT, for new acquisitions and re-competes, with estimated values of $50 million or more. The use of these templates is optional for other acquisitions.

(b) Implementation of the Metric Conversion Act of 1975, as amended, must be in accordance with NPD 7120.4, NASA Engineering and Program/Project Management Policy.

(g)(1) When acquiring information technology items capable of using Internet Protocol to communicate, the requirement for Internet Protocol Version Six (IPv6) compliance shall be documented by the requiring activity on NASA Form (NF) 1707, Special Approvals and Affirmations for Requisitions. If the requiring activity plans to purchase a networked IT product, the following three attachments shall accompany the NF 1707:

(i) Specification of IPv6 requirements for the item to be purchased.

(ii) Suppliers Declaration of Conformity (SDoC), a legal document that specifies and certifies the product's IPv6 capabilities.

(iii) Analysis between the requirements and the IPv6 requirements and the product's capabilities as captured on an SDoC.

(2) Requestors shall provide the IPv6 Compliance Procurement Waiver (NF 1835) for any items that have no IPv6 capabilities. For purchases that are less than $100K, signature approval authority for NF 1835 has been delegated to Center CIOs. Purchases of $100K or greater for items that have no IPv6 capabilities will require Agency CIO approval.

(i) For Space Flight and Ground Support Programs and Projects, the Program or Project Technical Authority(ies) (See NPR 7120.5) must certify that the Technical Standards and Specifications cited in any solicitation or award are: 1) the most recent version, 2) tailored to the needs of the project and its elements, and 3) registered with the NASA Technical Standards System. Exceptions must be approved by the Technical Authorities, and attached hereto. Program or Project Authority certifications may be obtained and documented through the procurement request process using NF 1707 (See 1804.7301).

(j) For procurements which include Space Communications and Navigation (SCaN) capabilities, the Program or Project Technical Authorities (See NPD 8074) must certify that the requirement has been coordinated with the SCaN Office in the Space Operations Mission Directorate (SOMD). Program or Project Authority certifications may be obtained and documented through the procurement request process using NF 1707 (See 1804.7301).

(k) Contracting officers shall include all applicable data requirements descriptions and requirement statements in solicitations and contracts (see Appendix C – Data Requirements Descriptions and Requirements Statements).

[PN 21-02, PN 21-05]

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.101 Order of precedence for requirements documents.

(a) Safeguards to ensure safety, security, and environmental protection must be included, as applicable, in requirements documents.

(b)(1) Requirements for the use of energy efficient motor vehicles will be established in accordance with NPR 6200.1, "NASA Transportation and General Traffic Management".

(b)(2) Requirements for the use of environmentally preferable products will be established in accordance with NPR 8530.1, "Sustainable Acquisition." Requirements for the use of energy and water efficient products and the use of renewable energy technology will be established in accordance with NPR 8570.1, "NASA Energy Management Program."

1811.101-70 Procedures.

(a) Contracting officers may rely on the requiring activity's declaration on the NF 1707 to determine the applicability of IPv6 requirements to its acquisition. When the NF 1707 and the requirements documents provided by the requiring activity establish the applicability of IPv6 in accordance with FAR 11.002, the contracting officer shall—

(1) Include a contract requirements statement in solicitations that specifically states that products and services that use the Internet Protocol provide full feature functionality in both dual stack (IPv4 and IPv6) and IPv6-only environments in compliance with the NIST USGv6 Testing Program. See Special Publication 500-267, A Profile for IPv6 in the U.S. Government – Version 1.0. The IPv6 requirements statement shall be substantially the same as the statement provided in NASA's contracting writing system Section C templates; and

(2) Include instructions in solicitations that require offerors to notify the contracting officer of any contract specifications that do not comply with providing full feature functionality for IPv6.

1811.102 Standardization program.

See the Office of Procurement Strategic Sourcing Website for additional guidance on standardization of requirements.

[PN 18-04]

1811.107 Solicitation provisions.

(b) NASA uses the categorical method to report its use of voluntary consensus standards. Therefore, use of the provisions at FAR 52.211-7 is not required. However, contracting officers must include in draft RFPs (DRFPs) the information required by 1815.201(c)(6)(A).

Subpart 1811.4--Delivery or Performance Schedules

1811.403 Supplies or services.

(a)(3) Contract delivery or performance schedules must not be expressed in terms of a notice of award. A notice of award as a specific document, separate from the award document itself, is not a contractual document and shall not be used as a reference point for contract performance. See 1814. 408 for additional information on notices of award.

1811.403-70 Packaging, handling, and transportation.

(a) NPR 6000.1, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components" provides guidance for shipment of certain NASA items.

(b) Contracting officers, with the advice of the requiring activity and the Center Transportation Officer, must include a designation of each deliverable item, or groupings of deliverable items, as Class I, II, III, or IV for the purposes of contractor compliance with the NPR.

1811.404 Contract clauses.

(a)(2) FAR 52.211-8**,** Time of Delivery, Alternates II and III, must not be used in NASA contracts.

(3) FAR 52.211-9, Desired and Required Time of Delivery, Alternates II and III, must not be used in NASA contracts.

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).

Subpart 1811.5—Liquidated Damages

1811.501 Policy.

(d) The procurement officer must forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement, Procurement Strategic Operations Division.

Subpart 1811.6—Priorities and Allocations

1811.600 Scope of subpart.

The Defense Priorities and Allocations System (15 CFR Part 700) may be viewed at https://www.gpo.gov/fdsys/pkg/CFR-2012-title15-vol2/xml/CFR-2012-title15-vol2-part700.xml.

1811.602 General.

(c) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Office of Procurement, Procurement and Grant Policy Division, must coordinate with DOD, as necessary, to ensure that any DOD requirements are met.

1811.603 Procedures.

(d) The Senior Procurement Executive is responsible for ensuring compliance with DPAS.

(e)(i) Rated orders may be used by NASA only as provided in Section 700.17 of the DPAS (15 CFR 700.17) and subject to the limitations provided in Section 700.18 of the DPAS (15 CFR 700.18). Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(ii) NASA rated orders may only be assigned a DO rating, unless NASA has obtained a DX rating from the Department of Defense.

(iii) The following program identification symbols may be used on NASA rated contracts and purchase orders for equipment and services that support authorized programs (see Schedule I of the DPAS):

A1 - Aircraft
A2 - Missiles
A3 - Ships
A5 - Weapons
A6 - Ammunition
A7 - Electronic and Communications Equipment
B1 - Military Building Supplies
B8 - Production Equipment (For Contractor's Account)
B9 - Production Equipment (Government-Owned)
C2 - Construction

C3 - Maintenance, Repair, and Operating Supplies for Facilities
C9 - Miscellaneous/Other

(g) Installation requests for assistance shall be directed to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

[PN 20-03]

PART 1812
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PART 1812
ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

Subpart 1812.2—Special Requirements for the Acquisition of Commercial Products and Commercial Services

1812.207 Contract Type.

(b)(1)(ii)(A) The Contracting Officer shall use the Time and Materials and Labor Hour Contract/Order Determination and Findings template.

Subpart 1812.3--Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

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

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

(A) 1852.204-75, Security Classification Requirements.
(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.

(ii) No other provisions and clauses prescribed in the NFS or center documents shall be used in acquisitions of commercial products and commercial services, except as permitted by FAR 12.302.
[PN 20-08, PN 23-16]

1812.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

(c) The Senior Procurement Executive is the approval authority for waivers. Requests for approval shall include a justification to substantiate tailoring of a provision or clause and shall be submitted to the Headquarters Office of Procurement, Procurement Strategic Operations Division. Requests shall be prepared and submitted in accordance with 1801.471.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commercial Products and Commercial Services

1812.404 Warranties.

(b) In acquisitions under the Simplified Acquisition Threshold specified in FAR Part 13, Contracting officer's shall not require any express warranty other than the offeror's commercial warranty.

1812.470 Unacceptable commercial products and commercial services terms and conditions.

When procuring commercial software or other commercial products, contracting officers shall follow the guidance in the commercial items terms and conditions chart to preclude inclusion of unacceptable terms and conditions in the contract or order. The following chart lists commercial terms and conditions that are commonly found in software manufacturers' unmodified commercial supplier agreements that are either inconsistent with Federal law or with requirements of the FAR. This list is not all-inclusive. In the event a commercial supplier proposes terms and conditions that may be unacceptable consultation with the legal office is advised.

Terms and conditions	Problem/recommendation
Definition of contracting parties	The licensee or customer shall be reflected as the specific agency or other federal entity that placed the order under which the license is provided. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

Automatic contract formation via shrink-wrap/click-wrap/browse-wrap/web-wrap (e.g. using, downloading, clicking “I Agree”), or a provision purporting to bind the Government to a set of terms incorporated by reference (e.g., posted at a specified URL).	Under FAR 1.601(a), in an acquisition involving the use of appropriated funds, an agreement binding on the Government may only be entered into by a duly warranted contracting officer in writing. Under FAR 43.102, the same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government. These types of contractor terms and conditions should be excluded from Government contracts and orders.
Customer indemnities: the customer commits to indemnify the vendor for various things, e.g., in connection with claimed infringement of intellectual property rights.	This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 USC 1341 and 41 USC 6301), because it commits the Government to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. These types of contractor terms and conditions should be excluded from Government contracts and orders.
Contractor indemnities. Under these clauses, the contractor typically commits to pay damages and to "defend" the Government in various types of lawsuits, typically IP-related, on condition that the Government gives the contractor "sole control" over the conduct of such proceedings	Contractor indemnities are very desirable, especially in IT acquisitions. However, the undertaking to "defend" and the concept of "sole control" in litigation are contrary to the jurisdictional statute of the DOJ (28 USC 516) which vests the right to defend the Government and to exercise sole control in litigation, solely in the DOJ. Indemnification clauses should be retained in the agreement but revised. The DOJ must represent or “defend” the Government; however, the clause may provide for appropriate consultation with the contractor and its right to intervene in the proceedings at its own expense through legal counsel of its choice.

Automatic renewals: term-limited products or services (e.g., term licenses for software, or maintenance) renew automatically, and renewal charges fall due automatically, unless the customer takes action to opt out or terminate	Anti-deficiency violation. These types of contractor terms and conditions should be excluded from Government contracts and orders. For term-limited products or services, every subsequent term must be purchased separately.
Unspecified future fees or penalties. These fees and penalties can take a number of forms, such as the following: • Contractor's unilateral right to raise prices or to change from awarded contract prices to "then-current" commercial catalog prices. • Travel costs. • Various surcharges. • Various penalties, e.g., for late payment (including interest), for late shipment of defective part for repair, or for hiring a contractor's employee. • Liquidated damages. • Audit costs. • Maintenance reinstatement fees. • Government payment of contractor's attorney fees.	Anti-deficiency violation. These types of contractor terms and conditions should be excluded from Government contracts and orders. Generally, the Government should pay only the awarded contract price; any change to the contract price requires the contracting officer's approval and, specifically in Schedule contracts, is further limited as to frequency and amount. Applicable federal travel regulations govern travel costs. Late payment interest is governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Attorney fees are available only under limited circumstances to certain small business claimants as set forth in the Equal Access to Justice Act (5 USC 504).
Taxes	FAR 52.212-4(k) provides that the contract price includes all applicable Federal, state and local taxes and duties. Under a line of GAO (U.S. Government Accountability Office) cases based on the Supremacy Clause of the US Constitution, the Government is exempt from state and local taxes whose "legal incidence" falls on the Federal Government. The applicability of a particular tax (e.g. “excise tax”) to the Government is a case by case determination for the contracting officer. Accordingly, contractor terms and conditions attempting to place responsibility for taxes on the Government customer should be excluded from Government contracts or orders. This includes terms and conditions which purport to accept the manufacturers or contractors

	corporate income tax. If the vendor believes any charge is payable by the Government, the vendor should be instructed to submit such charge to the contracting officer for review.
Third-party terms: where the vendor's offering includes components provided by other manufacturers, or where the contractor is a dealer or reseller of other manufacturers' products, the agreement will often say that the customer agrees to be bound by the terms and conditions established by such manufacturer, without an opportunity for the customer to object to or negotiate the terms. The vendor or reseller is not a party to the third-party terms and disclaims all responsibility, while the manufacturer may become a third-party beneficiary of the contract.	This also introduces potentially unacceptable terms and removes the Government's ability to control what terms it is bound by. These types of contractor terms and conditions should be excluded from Government contracts and orders. Contractor indemnities do not constitute effective mitigation.
Contract to be governed by state/foreign law, litigated in state/foreign courts, or arbitrated; contractual limitation on actions	These types of contractor terms and conditions should be excluded from Government contracts and orders. All contracts to which the Federal Government is a party must be governed by Federal law under principles of sovereign immunity. Depending on the cause of action (e.g., tort, breach of contract, infringement of copyright or patent), both venue and the statute of limitations are usually mandated by applicable Federal law (e.g., the Federal Tort Claims Act, 28 USC 1346(b); the Contract Disputes Act, 41 USC 7101 *et seq*; the Tucker Act, 28 USC 1346(a)(1)). NASA has not issued agency wide approval for use of binding arbitration agreements which can only be implemented by the head of the agency when promulgated via administrative rulemaking (5 USC 575(c)). As such, requests to enter into binding arbitration are considered on a case-by-case basis at the time of the dispute. Such requests

	may also require the approval of the Department of Justice. These types of contractor terms and conditions should be excluded from Government contracts and orders.
Equitable remedies, injunctions	A sovereign immunity issue. Equitable remedies are generally not available against the Government under Federal statutes. These types of contractor terms and conditions should be excluded from Government contracts and orders.
Unilateral termination by contractor for breach	Inconsistent with FAR 52.233-1, which requires the contractor to submit a claim to the contracting officer if it believes the Government to be in breach, and to continue performance during the pendency of the claim. In commercial product and commercial services contracts, the FAR also specifies the procedures for Government termination for breach or convenience. Under FAR 12.302(b), the FAR provisions dealing with dispute and continued performance cannot be changed by the contracting officer. These types of contractor terms and conditions should be excluded from Government contracts and orders.
Unilateral modification: the vendor reserves the right to unilaterally change the license terms or terms of service, with or without notice to the customer	This clause violates the contract formation rules of FAR 1.601(a) and 43.102. This allows the vendor to introduce unacceptable terms in the future and removes the Government's ability to control what terms it is bound by. These types of contractor terms and conditions should be excluded from Government contracts and orders.
Confidential Information: the vendor requires that the Government keep confidential certain information, including pricing and the terms of an order.	The clause must recognize that courts of competent jurisdiction may require certain information to be released. For example, the Freedom of Information Act (FOIA) (5 USC 552) requires that information that does not

	fall under certain exceptions must be released when requested. Such confidential clauses must be modified to recognize that federal agencies are subject to FOIA and some information may be released despite being characterized as "confidential" by the vendor.
Assignment without express Government approval	FAR 42.12 governs novation agreements or assignment of contracts while FAR 52.232-23 governs the Assignment of Claims. Contractor terms and conditions inconsistent with these FAR clauses should be excluded from Government contracts and orders.

[PN 23-16]

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—

(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 is 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.

(4) In any such contract, the Administrator shall reserve the right to completely or partially terminate the contract without payment of such termination liability because of the contractor's actual or anticipated failure to perform its contractual obligations.

PART 1813
SIMPLIFIED ACQUISITION PROCEDURES

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PART 1813
SIMPLIFIED ACQUISITION PROCEDURES

1813.003 Policy.

(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.

Subpart 1813.1—Procedures

1813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

1813.106-3 Award and documentation.

(b)(3)(ii) For purchases up to $50,000, documentation shall be limited to a brief notation in the file indicating the rationale for selecting other than the lowest priced offer.

Subpart 1813.3—Simplified Acquisition Methods

1813.301 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies and services. The NASA purchase card shall be used for micro-purchase threshold transactions, and for other eligible purchases, to the maximum extent practicable. (See FAR Part 2 for the current micro-purchase threshold.)

(b)(1) For purchases above the micro-purchase threshold, purchase cards may be used by cardholders, with the appropriate delegation of procurement authority, to make payments against contracts, purchase orders, or orders under blanket purchasing agreements (BPA). (See 1813.303-3(a)(4) for guidance on the use of purchase card for placing individual orders under blanket purchase agreements.) The NASA purchase cards may be used as a payment mechanism up to the simplified acquisition threshold on established orders or contracts.

(2) Use of the NASA purchase card on orders above the micro-purchase threshold does not relieve the cardholder from complying with all applicable statutory and regulatory requirements, including, but not limited to, soliciting competitive quotations, verifying price reasonableness, reserving for small businesses, including the appropriate terms and conditions, and reporting to the Federal Procurement Data System–Next Generation (FPDS-NG).

(c) NASA Policy Directive (NPD) 5104.1, Government Charge Cards, establishes policy, responsibilities and appropriate safeguards and internal controls for the management, use and continuous evaluation of NASA charge cards, which include travel, purchase, fleet charge

cards, and the Department of Defense (DoD) Aviation Into-plan Reimbursement (AIR) Card program and the Ships Easy Acquisition (SEA) Card program. The NPD also implements the Office of Management and Budget's (OMB) Circular A-123, Appendix B, and consolidates other charge card requirements issued by OMB, the General Services Administration (GSA), the Department of Treasury, DoD, and other Federal agencies.

(d) The Senior Procurement Executive—

(1) Serves as NASA's lead for maintaining Agency-wide policy and regulations pertaining to the NASA purchase card program, as carried out by the NASA Shared Services Center (NSSC); and

(2) Conducts procurement management surveys within the Agency, including review of purchase card process controls to ensure that they are designed appropriately and operate effectively to safeguard against fraud, waste, abuse, and mismanagement.

(e) The Executive Director of the NSSC oversees the—

(1) Implementation, use and management of the NASA purchase card program; and

(2) Activities of the Agency Program Coordinator for the NASA purchase card program and the contracting officer for the Agency's charge card contract with GSA.

(f) The Agency Program Coordinator, located at the NSSC, serves as the Agency's lead and subject matter expert for the management of the NASA purchase card program.

(g) The *NASA Purchase Card Procedures and Instructions* contains specific policy, procedures and instructions pertaining to the use of the NASA purchase card and is located, along with other guidance, on the NASA purchase card website at: https://www.nssc.nasa.gov/purchasecard. NASA purchase cardholders shall follow the policy and procedures outlined in NPD 5104.1 and the NASA Purchase Card Procedures and Instructions.

1813.301-70 Convenience checks.

The NASA Purchase Card Procedures and Instructions contains specific policy, procedures and instructions pertaining to the use of convenience checks, which is located on the NASA purchase card website. NASA purchase cardholders shall follow the policy and procedures set forth in the NASA Purchase Card Procedures and Instructions.

1813.302 Purchase orders.

1813.302-1 General.

(a) See 1813.003(g).

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 Products and Services, in simplified acquisitions exceeding the mircro-purchase threshold that are for other than commercial products and commercial services. This provision shall not be used for acquisition of commercial products and services 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 products and commercial services 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 Products and Commercial Services, 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.)

1813.302-70 Purchase orders under section 8(a) of the Small Business Act.

Purchase orders made using simplified acquisition procedures are authorized for 8(a) acquisitions under the simplified acquisition threshold.

1813.302-71 Policy.

(a) The NASA Shared Services Center (NSSC) is designated as the Agency's sole purchasing activity for the acquisition of all supplies and services valued at or below the simplified acquisition threshold (SAT), except for the following:

(1) Purchases made using the Government purchase card (see 1813.301), unless the purchase card function has been delegated to the NSSC.

(2) Indefinite delivery, indefinite quantity (IDIQ) contracts or blanket purchase agreements (BPAs) that permit the award of orders with a potential value over the SAT.

(3) Orders, regardless of value, awarded against IDIQ contracts or BPAs that have been retained by the center. This does not include orders issued against any of the Solutions for Enterprise-Wide Procurement (SEWP) contracts.

(4) Interagency Agreements.

(5) Orders for construction, facility repair or architect & engineering (A&E) services (Material Groups: C1, C2, Y, and Z).

(6) SAT purchases made by institutional support contractors on behalf of the Agency, and

(7) Real Property Leases.

(b) Agency requiring activities shall use the Simplified Acquisition Customer Portal (SACP) to submit SAT requests to the NSSC for processing, tracking and award. The SACP is assessable via the NASA Enterprise Service Desk. Materials pertaining to the use of the SACP, and other NSSC SAT guidance and procedures are located on the NSSC SAT webpage.

(c) A purchase request, which NSSC needs to obligate funds, must be created and approved within the SAP system when a SAT request is entered in the SACP. The requiring activity shall be responsible for obtaining all necessary center reviews/approvals (*e.g.,* organizational management, safety & health, quality assurance, property and information technology).

(d) In accordance with Mission Support Council (MSC) Decision Memorandum MSC-2011-12-001a, Eliminating Extraneous Promotional & Personal Use Items, all purchases of promotional and personal use items using appropriated funds are explicitly prohibited, except for only the following:

1. Printed materials
2. Stickers
3. Lapel pins
4. Mission patches
5. Flown flags
6. Inexpensive recyclable bags to facilitate the distribution of materials

Should prohibited items be purchased, the responsible party will be required to reimburse appropriated funds and be subject to appropriate disciplinary actions. The Decision Memo provides additional guidance and a framework for analyzing promotional and personal use item expenditures.

[PN 22-08, PN 23-07]

1813.303 Blanket Purchase Agreements (BPAs).

1813.303-3 Preparation of BPAs.

(a)(4) Individuals, other than warranted contracting officers, authorized to purchase under a BPA shall not be authorized to place individual BPA orders in an amount greater than $10,000, unless the center procurement officer has authorized, on a nondelegable basis and in writing, a higher limit not to exceed the simplified acquisition threshold. Written authorization shall delineate the qualifications and training of individuals authorized to place BPA orders greater than $10,000. For sole source BPA orders above the micro-purchase threshold, a contracting officer's determination is required in accordance with FAR 13.106-1(b)(1).

1813.303-5 Purchases under NASA BPAs.

(b) In accordance with FAR 13.303-5(b), NASA has established the following maximum thresholds for individual purchases under its BPAs—

(1) $7.5 million for individual purchases.

(2) $7.5 million for individual purchases for commercial products and commercial services acquisitions conducted under FAR subpart 13.5.

(3) $15 million for individual orders for acquisitions described in FAR 13.500(c)).

(4) $15 million for individual purchases entered into under the authority of FAR 12.102(f)(1)).

(5) None of the above thresholds apply to BPAs established in accordance with FAR 13.303-2(c)(3).

[PN 22-09]

1813.303-6 Review procedures.

(a) The annual BPA review shall be part of the Center's self-assessment process.
(b)(1) The contracting officer shall document an annual review of each BPA in accordance with FAR 8.405-3, using the BPA Annual Review template.

1813.307 Forms.

(b) Installations may use locally prescribed forms or the OF 347.

(c) Installations may use locally prescribed forms.

(d) The SF 44 may be used for purchases of aviation fuel and oil of $10,000 or less.

PART 1814
SEALED BIDDING

(Revised November 16, 2016)

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PART 1814
SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201-5 Part IV—Representations and instructions.

(c) *Section M, Evaluation factors for award.*

(i) The contracting officer shall state if award is to be made in the aggregate (all-or-none basis) or by specified groups of items.

(ii) If bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

1814.201-6 Solicitation provisions.

1814.201-670 NASA solicitation provisions.

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

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

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

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

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

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

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.

1814.404-1 Cancellation of invitations after opening.

(c) The authority to make the determination at FAR 14.404-1(c) is delegated to the contracting officer, except as provided in paragraph (e)(1) of this subsection.

(e)(1) A determination that includes an authorization to complete the acquisition through negotiation shall be made by the procurement officer, in consultation with the Office of Chief Counsel for Center acquisitions and Office of the General Counsel for Headquarters acquisitions.

1814.407 Mistakes in bids.

1814.407-3 Other mistakes disclosed before award.

(e) Procurement officers are authorized to make the determinations under FAR 14.407-3(a), (b), (c) and (d).

1814.407-4 Mistakes after award.

(d) All determinations, under this section, shall be made by the procurement officer.

1814.408 Award.

1814.408-1 General.

(c)(2) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government (considering only price and price-related factors) and that the formal award will be made upon satisfaction of specified pre-performance conditions.

(i) The notice of award is not a contractual instrument. It does not authorize the successful bidder to perform and, in itself, does not obligate the Government to award a contractual document. Its limited purpose is to provide evidence of the Government's selection of the successful bidder; instruction to that bidder to satisfy specified pre-performance conditions; and a statement that the Government intends to award the contract to the successful bidder upon satisfaction of these conditions.

(ii) Use of a notice of award is optional. The contracting officer may issue the award document itself without first issuing a notice of award. However, there are instances when a notice of award should be considered, for example, in construction contracts where performance or payment bonds are required. In such cases, the most cost effective technique is to require only the successful bidder to provide the necessary bonds. The notice of award advises the

successful bidder to provide the bonds, and it also serves as formal evidence from the Government of the impending award if such evidence is required to secure the bonds.

(iii) The notice of award shall not be issued unless bids have been evaluated and a selection made, and a definitive contract document is ready for execution upon satisfaction of the conditions specified in the notice. Upon satisfaction of these conditions, the approved and executed contract instrument shall be provided to the successful bidder.

(iv) Since the notice of award is not a contractual document authorizing performance, the period of performance of the resultant contract shall not be based on the date of issuance or receipt of the notice of award. The period of performance specified in the contract shall be based on some other reference point, such as the date the contract is provided to the successful bidder, a mutually agreeable effective date or a later authorization to proceed date.

(v) The notice of award can be issued by the contracting officer using any formal written means to include letter, facsimile or other electronic means. The notice should be substantially the same as the following format.

Format

Subject: Notice of Award--Invitation for Bids (IFB) (**insert IFB number and title**). This notice is to advise you that your bid (**insert bid identification**) in response to the subject IFB has been determined to be the most advantageous to the Government (considering only price and price-related factors). It is the Government's intention to award you a contract in the amount of (**insert award price**) for this effort pending satisfaction of the following pre-performance conditions:

(**insert performance conditions e.g. any required payment and performance bonds**)

Evidence (**insert evidence description e.g. the actual payment and performance bonds**) of satisfaction of these conditions must be provided to the contracting officer by (**insert due date for submittal of evidence**). In the event these conditions are not satisfied by this date, the Government reserves the right to award the contract to the bidder who submitted the next most advantageous bid.

Please note that this notice of award is not a contractual document. It does not obligate the Government to award you, or any other bidder, a contract relative to the subject IFB, and it does not authorize you to proceed with contract performance or incur costs pursuant to such performance. Any costs incurred for contract performance prior to your receipt of a fully executed contract document are at your own risk and are not recoverable under any Government contract should the Government fail, for whatever reason, to award you a contract in response to the subject IFB.

If a contract is awarded after evidence of satisfaction of the pre-performance conditions listed above is provided to the contracting officer by the specified due date, the date of commencement of work will be provided with the formal award. This date will be based on (**identify basis for date of commencement of performance**).

PART 1815
CONTRACTING BY NEGOTIATION

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PART 1815
CONTRACTING BY NEGOTIATION

Subpart 1815.1—Source Selection Processes and Techniques

1815.101 Best value continuum.

When a written acquisition plan is not required by 1807.103, the contracting officer must document in the contract file the source selection approach to be used (e.g. full trade-off utilizing mission suitability, cost/price, and past performance factors; lowest price technically acceptable (LPTA), as described in FAR 15.101-2, where there is no tradeoff; price performance tradeoff (PPTO) where there is a tradeoff between price and past performance factors; or a combination of approaches) and the rating method (numerical scoring, acceptable/unacceptable, adjectival ratings & definitions) to be used, how they will be used, and how these will result in selection of the best value to the Government. Identify all evaluation factors and their relative importance to one another and how the non-cost factors relate to the cost factor. To the extent that subfactors are utilized under any of the evaluation factors, the solicitation shall also provide the relative importance of each subfactor to one another under the specific evaluation factor.

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) Except for acquisitions described in 1815.300-70(b) contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $10,000,000 (including all options or later phases of the same project). The contracting officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The requirement for a DRFP shall not be waived because of poor or inadequate planning. DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. If the DRFP contains Government-unique standards, potential offerors should be invited to identify voluntary consensus standards that meet the Government's requirements as alternatives to Government-unique standards cited as requirements, in accordance with FAR 11.101 and OMB Circular A-119. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(B) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(C) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(D) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(E) If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting officers shall use that information to establish a common set of performance-based payments parameters in the final RFP when practicable.

(f)(i) Upon release of the final RFP, the contracting officer shall direct all personnel associated with the acquisition to refrain from communicating with potential offerors and to refer all inquiries to the contracting officer. This procedure is commonly known as a "blackout notice" and shall not be imposed before release of the final RFP. Contracting Officers shall utilize the “Blackout Notice” template to draft the “blackout notice”. The “blackout notice” may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition. Contracting officers shall ensure the blackout notice is widely distributed throughout the Centers and Headquarters, as appropriate, unless an Agency-wide “blackout notice” has been distributed by Headquarters.

(ii) For Agency-wide or Multiple Centers-wide acquisitions, contracting officers shall complete the “Blackout Notice” template and submit it to the Director, Headquarters Office of Procurement, Procurement Strategic Operations Division, via encrypted email using NASA’s current encryption software, at least five (5) business days prior to the planned release of the final RFP. The Agency-wide “blackout notice” will be distributed by the Office of Communications via an Agency-wide communication to all NASA civil service employees after release of the final RFP.

(iii) Blackout notices are not intended to terminate all communication with offerors. Contracting officers shall be the primary point of contact and should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

[PN 19-14]

1815.203 Requests for proposals.

1815.203-70 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. The levels of management review should be commensurate with the dollar value and complexity of the acquisition. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, installations should consider use of a single review meeting called a Solicitation Review Board (SRB) as a streamlined alternative to the serial or sequential

coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Attendance should be limited to key senior personnel and offices with review and approval responsibilities only. Actions assigned and changes required shall be documented in writing by the SRB.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.370, the SEB shall review the RFP prior to issuance.

(c) When LPTA, PPTO, or other source selection procedures are used in accordance with 1815.300-70(a)(1)(ii), the evaluation team, per FAR 15.303(b)(1), shall review the RFP prior to issuance.

1815.203-71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall send a copy of the RFP to the Senior Procurement Executive, through the Headquarters Office of Procurement, Procurement Strategic Operations Division. Transmission of the RFP must be sent via an encrypted email using NASA Public Key Infrastructure (PKI). If the RFP is too large for transmission via email, transmission of the RFP should be coordinated with the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

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.

[PN 18-11]

1815.204 Contract format.

1815.204-2 Part I—The Schedule.

(c) To the maximum extent practicable, requirements should be articulated as performance-based specifications and performance work statements that focus on required outcomes or results.

1815.204-5 Part IV—Representations and instructions.

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision.

1815.204-70 Page limitations.

(a) Technical and contracting personnel will agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/ specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than 12-point type. Use by offerors of smaller font sizes for non-standard text (e.g. graphics, tables, charts, figures, captions, etc.) is permitted, if appropriate. However, such fonts shall be no smaller than 8-point, shall be utilized only where appropriate, and shall not be utilized to circumvent or avoid RFP proposal page limitations. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 11" size may also be used.

(b) Page limitations shall be established in solicitations for proposals submitted in all competitive acquisitions. Accordingly, technical and contracting personnel will agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of content, and cost/price information, shall not exceed 500 pages using the page definition of 1815.204-70(a). Page limitations shall also be established for final proposal revisions. The appropriate page limitations for final proposal revisions should be determined by considering the complexity of the acquisition and the extent of any discussions. The same page limitations shall apply to all offerors. Pages submitted in excess of specified limitations will not be evaluated by the Government. The contracting officer shall return one copy of the excess pages removed from the proposal to the offeror, advising the offeror that they were over the limit and will not be evaluated. The contracting officer shall retain one copy of each offeror's proposal in the official contract file and document which excess proposal pages were not evaluated and returned to the offeror.

1815.207 Handling proposals and information.

1815.207-70 Release of proposal information.

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

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

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

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

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

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

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

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

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

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

(2) Unsolicited proposals; and

(3) SBIR and STTR proposals.

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

(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.

1815.209 Solicitation provisions and contract clauses.

(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.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.

1815.300-70 Applicability of subpart.

(a)(1) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted in accordance with FAR 15.3 and this subpart as follows:

(i) When acquiring complex services, hardware development, or research and development that include technically complex requirements, contracting officers should use a mission suitability factor, numerically score the proposals, and use the SEB procedures in 1815.370.

(ii) When acquiring routine, non-complex, repetitive follow-on services, non-developmental hardware, or non-research and development supplies or services, contracting officers may use other source selection procedures such as LPTA, as described in FAR 15.101-2, where there is no tradeoff, PPTO, or other source selection approach except those at 1815.370.

(2) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15. 3 and this subpart are not applicable to acquisitions conducted under the following procedures:

(1) AO (see Part 1872).

(2) NRA (see 1835.016-71).

(3) The SBIR and the STTR programs under the authority of the Small Business Act (15 U.S.C. 638).

(4) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

(5) PPTO procedures for construction projects when the following applies: the Government develops and provides the design specifications in the solicitation; the offerors are not required to submit technical proposals; and selection is based solely upon price and past performance factors.

1815.303 Responsibilities.

(a) The Source Selection Authority (SSA) shall be established at the lowest reasonable level for each acquisition and documented in the acquisition plan or procurement strategy meeting (PSM) presentation. The SSA for center acquisitions shall be documented in the acquisition plan or PSM. In accordance with NFS 1801.603-1, the SSA will be appointed by the Senior Procurement Executive prior to the PSM.

(b)(i) The SSA is the Agency official responsible for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities in addition to those listed in the FAR:

(A) Approve the source selection approach, rating method, evaluation factors, subfactors, the weight of the evaluation factors and subfactors when used, and any special standards of responsibility (see FAR 9.104-2) before release of the final RFP, or delegate this authority to appropriate management personnel.

(B) Appoint the source selection evaluation team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team.

(C) Provide the source selection evaluation team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(b)(ii) See 1803.104-70 for restrictions on participating in evaluation or selection of proposals.

(b)(2) Approval authorities for acquisition plans and PSMs are in accordance with 1807.103.

[PN 21-01]

1815.304 Evaluation factors and significant subfactors.

(c)(4)(A) Small Business Utilization, including the small business subcategories – SDB, HUBzone, VOSB, SDVOSB, and WOSB utilization concerns, shall be evaluated by the SSA or appropriate evaluation team member as a subfactor under the Mission Suitability factor or as a

separate factor, as appropriate. The Small Business Utilization factor/subfactor shall provide for a separate and distinct evaluation of the Small Business plans, including compliance with FAR 19.704 requirement. Previous small business subcontracting performance will be rated as part of the Past Performance factor.

(B) Contracting Officers shall specify NASA recommended goals for each small business category in solicitations that require the submission of a subcontracting plan under FAR 52.219-9. NASA recommended goals for SDB may not exceed 5 percent. If a requirement offers low levels of small business subcontracting opportunities, the contracting officer may choose not to utilize recommended goals and have the contractor propose goals.

(C) In addition to the subcontracting plan requirements of FAR 19.704 and the proposed small business goals, contracting officers should consider other aspects of the subcontracting plan in their proposal evaluation. The following are examples of desirable subcontracting plan characteristics (this is not an all-inclusive list):

(*1*) Clear identification of which small businesses will be used in actual contract performance, and how they will be used.

(*2*) Use of small business subcontractors for meaningful work, including high technology work.

(*3*) Inclusion of enforceable small business subcontracting plans at lower-tier levels.

(*4*) Support of the mentor protégé program.

(*5*) Participation in outreach initiatives.

1815.304-70 NASA evaluation factors.

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Past Performance. The evaluation factors are developed by the source selection evaluation team and approved by the SSA. Evaluation factors may be further defined by subfactors. Evaluation subfactors should be structured to identify significant discriminators, the essential information required to support a source selection decision. Too many subfactors undermine effective proposal evaluation. All evaluation subfactors should be clearly defined to avoid overlap and redundancy. Further sub-division below the subfactor level is prohibited.

(b) Mission Suitability factor, if used.

(1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale. (See 1815.300-70(a)(1)(ii).)

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to five. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(i) For cost reimbursement acquisitions, the Mission Suitability evaluation shall consider the adequacy of the offeror's proposed approach to meeting the requirements of

the solicitation including the appropriateness of the offeror's proposed resources. Contracting Officers shall ensure that the solicitation notifies offerors that a lack of resource realism may adversely affect their Mission Suitability scores, and result in cost realism adjustments under the cost factor.

(c) *Cost/Price factor*. This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs/prices. The Cost/Price factor is not numerically weighted or scored.

(d) *Past Performance factor.*

(1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition.

(2) Contracting officers shall include instructions in the RFP for offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content, and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those awarded in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly in the RFP.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems, and terminations.

(3) The contracting officer may start collecting past performance data before proposal receipt. One method for early evaluation of past performance is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their customers along with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

(4) The contracting officer shall evaluate the offeror's past performance in occupational health, security, safety, and mission success (e.g., mishap rates and problems in delivered hardware and software that resulted in mishaps or failures) when these areas are germane to the requirement.

1815.305 Proposal evaluation.

(a) The source selection evaluation team shall evaluate each proposal to—

(i) Identify and document all significant strengths, strengths, deficiencies, weaknesses, and significant weaknesses. These findings must include a description of how each strength, deficiency, and weakness will impact performance in terms of benefit or risk statements;

(ii) Identify and document the numerical score and/or adjectival rating of each Mission Suitability subfactor, if applicable;

(iii) Document the cost or price analysis performed and, if conducted, the cost realism analysis performed;

(iv) Identify and document the past performance evaluation findings and the rationale for the assigned level of confidence rating; and

(v) Document any programmatic risk to mission success, e.g., technical, schedule, cost, safety, occupational health, security, export control, or environmental. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, or as a result of the cost, schedule, and performance impacts associated with its approach. Risk evaluations must consider the probability of the risk occurring, the impact and severity of the risk, the timeframe when the risk should be addressed, and the alternatives available to meet the requirements. Risk assessments shall be captured as part of strengths, weaknesses, and deficiencies, as applicable. Identified risks and the potential for cost impact shall be considered in the cost or price evaluation.

(a)(1) *Cost or price evaluation*.

(A) When contracting on a basis other than firm-fixed-price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal:

(a) Are realistic for the work to be performed,

(b) Reflect a clear understanding of the requirements, and

(c) Are consistent with the various elements of the offeror's technical proposal.

(B) The analysis shall, to the extent appropriate for the acquisition, include:

(a) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates, and indirect rates. Any adjustments in direct and indirect costs, other than minor computation errors, must be fully explained and documented and, where applicable, traceable to the technical evaluation. The probable cost should reflect the Government’s best estimate based on cost resulting from the offeror's proposal after all known adjustments have been considered.

(b) The identification of the differences between the probable cost and offeror’s proposed costs regarding business methods, operating procedures, and practices as they affect cost.

(a)(2) *Past performance evaluation*.

(A) The Past Performance evaluation assesses the contractor's performance under previously awarded contracts. The past performance evaluation shall be in accordance with FAR 15.305(a)(2) and this section. When applying the definitions below to arrive at a confidence rating, the evaluation team shall consider and clearly document each offeror’s relevant past performance (e.g. currency/recency, size, content and complexity) to assess the offeror’s past performance data and assign an overall confidence rating. The past performance evaluation is an assessment of the Government’s confidence in the offeror’s ability

to perform the solicitation requirements. At the source selection evaluation team's discretion, strengths and weaknesses may be assigned. Past Performance shall be evaluated for each offeror using the following levels of confidence ratings:

Very High Level of Confidence
The offeror's relevant past performance is of exceptional merit and is very highly pertinent to this acquisition, indicates exemplary performance in a timely, efficient, and economical manner and very minor (if any) problems with no adverse effect on overall performance. Based on the offeror's performance record, there is a very high level of confidence that the offeror will successfully perform the required effort. (One or more significant strengths exist. No significant weaknesses exist.)

High Level of Confidence
The offeror's relevant past performance is highly pertinent to this acquisition; demonstrating very effective performance that would be fully responsive to contract requirements. Offeror's past performance indicates that contract requirements were accomplished in a timely, efficient, and economical manner for the most part, with only minor problems that had little identifiable effect on overall performance. Based on the offeror's performance record, there is a high level of confidence that the offeror will successfully perform the required effort. (One or more significant strengths exist. Strengths outbalance any weakness.)

Moderate Level of Confidence
The offeror's relevant past performance is pertinent to this acquisition, and it demonstrates effective performance. Performance was fully responsive to contract requirements; there may have been reportable problems, but with little identifiable effect on overall performance. Based on the offeror's performance record, there is a moderate level of confidence that the offeror will successfully perform the required effort. (There may be strengths or weaknesses, or both.)

Low Level of Confidence
The offeror's relevant past performance is at least somewhat pertinent to this acquisition, and it meets or slightly exceeds minimum acceptable standards. Offeror achieved adequate results; there may have been reportable problems with identifiable, but not substantial, effects on overall performance. Based on the offeror's performance record, there is a low level of confidence that the offeror will successfully perform the required effort. Changes to the offeror's existing processes may be necessary in order to achieve contract requirements. (One or more weaknesses exist. Weaknesses outbalance strengths.)

Very Low Level of Confidence
The offeror's relevant past performance does not meet minimum acceptable standards in one or more areas; remedial action was required in one or more areas. Performance problems occurred in one or more areas which, adversely affected overall performance. Based on the offeror's performance record, there is a very low level of confidence that the offeror will successfully perform the required effort. (One or more deficiencies or significant weaknesses exist.)

Neutral
In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305(a) (2) (ii) and (iv)).

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors.

(C) Questionnaires and interviews may be used to solicit assessments of the offeror's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and addressed in the evaluation of past performance.

(a)(3) *Technical Evaluation*.

(A) Mission Suitability subfactors, when used, shall be evaluated using the following adjectival ratings, definitions, and percentile ranges.

ADJECTIVAL RATING	DEFINITIONS	PERCENTILE RANGE
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more significant strengths. No deficiency or significant weakness exists.	91-100
Very Good	A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist.	71-90
Good	A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror’s response.	51-70

Fair	A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths.	31-50
Poor	A proposal that has one or more deficiencies or significant weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to correct.	0-30

(B) When contracting on a cost reimbursement basis, a cost realism analysis shall be performed consistent with FAR 15.404-1(d).

(a)(4) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of the proposed costs elements. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

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.

[PN 18-11]

1815.305-71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the SSA shall direct the contracting officer to one of the following:

(1) Award after negotiating an acceptable contract (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.403-4); or

(2) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.305-71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

[PN 19-06]

1815.306 Exchanges with offerors after receipt of proposals.

(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.

(d)(3)(A) The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer should question inadequate, conflicting, unrealistic, or unsupported cost information, differences between the offeror's proposal and most probable cost assessments, cost realism concerns, differences between audit findings and proposed costs, proposed rates that are too high/low, and labor mixes that do not appear responsive to the requirements. No agreement on individual cost/price elements or a "bottom line" is necessary.

(B) The contracting officer shall discuss contract terms and conditions so that a "model" contract can be sent to each offeror with the request for final proposal revisions. If the solicitation allows, any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror’s "model" contract. If the offeror declines to include these strengths in its "model" contract, the Government evaluators should reconsider their characterization as strengths.

(e)(1) In no case shall the contracting 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.

1815.307 Proposal revisions.

(b)(i) The request for final proposal revisions (FPRs) shall also—

(A) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(B) Require offerors to complete and execute the "model" contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(C) Caution offerors against unsubstantiated changes to their proposals; and

(D) Establish a page limit for FPRs.

(ii) Approval of the procurement officer is required to reopen discussions.

(iii) Proposals are rerated and, for mission suitability, rescored based on FPR evaluations. Scoring or rating changes between initial and FPRs shall be clearly traceable.

1815.308 Source selection decision.

(1) A Source Selection Decision (SSD) is a deliberative decision that is documented in the Source Selection Statement, reflecting the thought process behind the selection and representing the independent judgment of the SSA. The SSA has broad discretion in determining the manner and extent to which technical, past performance, and cost evaluation results of the source selection evaluation team are used, subject only to the tests of rationality and consistency with the evaluation criteria identified in the solicitation. The adjectival ratings and numerical scoring presented to the SSA, which represent the source selection evaluation team's relative ranking of proposals within the mission suitability factor, when the mission suitability is included as an evaluation factor cannot be the sole basis for a selection decision. Instead**,** the selection shall be based upon a comparative assessment of the relative discriminators that includes a discussion of the benefits or risks/detriments associated with the discriminators of the selected offeror over all other offerors considering all evaluation factors (i.e. past performance factor, cost/price factor, other non-price factors).

(2) All significant evaluation findings shall be fully documented and considered in the source selection decision. The source selection decision shall document the SSA's rationale supporting the selection. The source selection decision shall document the mission suitability subfactor ratings and overall mission suitability score, if applicable. Selection is made on the basis of the evaluation criteria established in the RFP.

(3) Before award, the SSA shall sign a source selection statement that clearly and succinctly justifies the SSD. The NASA Source Selection Statement Development Guide provides agency-wide guidance. Source selection statements must describe: the acquisition, the evaluation procedures, the substance of the Mission Suitability evaluation, when used, and the evaluation of the Cost/Price and Past Performance factors. The statement must also address unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The source selection statement shall include the successful offeror's overall proposed cost or price (contract award value) as well as the successful offeror's overall evaluated cost or price (probable). The source selection statement shall not disclose the proposed or overall evaluated cost or price for unsuccessful offerors. Instead, the source selection statement shall describe the overall proposed and probable cost or price of unsuccessful offerors in relative terms of comparison to the successful offeror's cost or price, e.g. offeror ABC's probable cost or price was minimally or substantially, higher or lower than the successful offeror's cost/price. The source selection statement shall not reveal any confidential business information, to include trade secrets and commercial or financial information prohibited from disclosure by FAR 24.202 or exempt from release under the Freedom of Information Act, 5 U.S.C. 552 and the Trade Secrets Act, 18 U.S.C. 1905. Questions about confidential business information, disclosure of such information, and contents of source selection statements shall be directed to the Office of the General Counsel. Except for certain major system acquisition competitions (see 1815.506-70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement

shall be available to the contracting officer or other Debriefing Official to use in postaward debriefings of unsuccessful offerors and shall be provided to debriefed offerors upon request. If the source selection and contract award are not protested or otherwise challenged, the contracting officer shall post the source selection statement on the SAM.gov Contract Opportunities web page not later than 10 calendar days after the protest period has expired. If the source selection or contract award is protested or otherwise challenged, the source selection statement shall not be posted and shall be controlled as sensitive source selection information until the protest or challenge has been resolved. The source selection statement shall be posted for a period of not less than 30 days.

(4) Once the selection decision is made, the contracting officer shall award the contract.

[PN 22-02]

1815.370 NASA source evaluation boards.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.300-70(a)(1)(i). The NASA Source Selection Guide provides agency-wide guidance to individuals participating in the Source Evaluation Board (SEB) process.

(b) The SEB assists the SSA by providing expert analyses of the offerors' proposals in relation to the evaluation factors and subfactors contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA. Although the SSA may seek advice or opinions about the SEBs findings from key senior personnel or management during the executive session (if held) that follows the SEB presentation, the source selection decision must reflect the SSA's sole independent decision and judgment. Any individual participating in an executive session with the SSA shall be cleared in advance of the source selection briefing of any conflict of interest consistent with NPR 1900.3 and NPD 1900.9, Ethics Program Management.

(c) *Designation.*

(1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, deficiencies, weaknesses, and risks associated with proposals submitted in response to the solicitation. Advance planning is required to identify fully-engaged and dedicated resources as early as possible in the process. Dedicated resources are necessary to complete early acquisition milestones in a timely manner, e.g., defining the requirements, acquisition strategy, etc. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan or procurement strategy meeting approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with 1815.207-70.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement, Procurement Strategic Operations Division must concur on the SEB appointments.

Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(d) *Organization*.

(1) The organization of an SEB is tailored to the requirements of the particular acquisition. This organization can range from the most streamlined and efficient situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels/consultants (as described in paragraphs (d)(4) and (5) of this section) to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the established evaluation factors and subfactors and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (non-voting members, committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 25, unless approved in writing by the Senior Procurement Executive. Requests to exceed the evaluation team size limitation shall provide a detailed justification and shall be sent to the Headquarters Office of Procurement, Procurement Strategic Operations Division.

(e) *Voting members*.

(1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that the appointment of members be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of an SEB.

(3) The SEB voting members shall review the findings of non-voting members, (e.g., committees, panels, or consultants) and use their own collective judgment to develop the

SEB consensus evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of seven voting members. Whenever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not feasible, SEB membership shall take precedence over other duties.

(5) The SEB should be comprised of a multidisciplinary team to ensure comprehensive evaluation of proposals. Voting members should include senior representatives that have expertise in various functional areas specific to the unique acquisition requirements. The following positions shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) A senior Safety and Mission Assurance (SMA) representative, as required based upon the type of acquisition.

(iv) Committee chairpersons (except where this imposes an undue workload).

(f) *Non-voting members and consultants*

(1) Non-voting members include SEB members that review proposals and provide routine input to the evaluation results, but are not included in the voting membership. Non-voting members typically provide substantial support that may be full-time or near full time (e.g., contracting officer and/or procurement representative, cost/price evaluator, past performance evaluator).

(2) Consultants provide limited support in specific areas (e.g., Mission Suitability technical engineering discipline, small business specialist) on a less than full time basis.

(g) *Ex officio members.*

(1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members shall not participate in the actual rating/scoring process. However, the SEB Recorder and/or procurement representative (if not a voting member) should be present during rating sessions. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph (g)(2) of this section is discouraged.

(2) The following shall be ex officio members on all SEBs:

(i) The procurement officer and assigned procurement staff.

(ii) The Office of General Counsel and/or assigned Office of the General Counsel designee of the installation.

(iii) The SEB recorder.

(h) *Evaluation.*

(1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated consistent with the solicitation evaluation criteria factors and subfactors;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) The committee findings for each proposal, including documentation of all significant strengths, strengths, deficiencies, weaknesses, and significant weaknesses which significantly affected the evaluation and any reservations or concerns, including supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) The SEB process must be adequately documented. Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records as outlined in paragraph (j) of this section.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment. The SEB shall document the results of rating and scoring of proposals.

(i) *SEB presentation.*

(1) The SEB Chairperson shall brief the SSA on the results of the SEB evaluation to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain—

(i) Any applicable special standards of responsibility;

(ii) Evaluation factors and subfactors;

(iii) The significant strengths and significant weaknesses of the offerors which includes a description of the benefits or risks associated with the significant findings;

(iv) The Government independent cost estimate, if applicable;

(v) The offerors' proposed cost/price;

(vi) The probable cost;

(vii) The proposed fee arrangements; and

(viii) The final adjectival ratings and scores to the subfactor level.

The presentation to the SSA shall include the total mission suitability point score for each offeror’s proposal. An adjectival rating (e.g. excellent, very good, etc.) shall be assigned for each mission suitability subfactor, but an adjectival rating shall not be assigned for the total mission suitability factor of each offeror’s proposal. The SEB shall compute the total mission suitability point score by adding all of the mission suitability subfactors points assessed, with the maximum possible total mission suitability point score being 1000 points. The total mission suitability point score does not represent a precise measure of the relative merit of any one offeror’s proposal, rather it shows an offeror’s relative standing by providing the total points each offeror’s proposal is assessed out of the possible 1000 points so that the offerors can be compared.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall—

(i) Ensure that the solicitation and evaluation processes complied with all applicable Agency policies and that the presentation accurately conveys the SEB's activities and findings; and

(ii) Not change the established evaluation factors, subfactors, weights, or scoring systems, or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement, Procurement Strategic Operations Division will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the head of the contracting activity and to the Official-in-Charge of the cognizant Headquarters Program Office.

(j) A source selection statement shall be prepared in accordance with 1815.308 by either the Office of Procurement, or Office of the General Counsel, or as a collaborative effort.

(k) SEB Records.

(1) The contracting officer shall retain in the official contract file, source selection documentation in accordance with FAR 4.803(a)(13), Contents of contract files. Specifically, upon completion of SEB activities, the contracting officer shall retain a copy of the following source selection evaluation documents in the official contract file for initial proposals and final proposal revisions (FPR), if applicable:

(i) Each offeror's proposal.

(ii) The competitive range determination(s).

(iii) The unsuccessful and successful notices sent to offerors.

(iv) If committees were utilized, the committee's evaluation for each evaluation factor, including all identified significant strengths, strengths, significant weakness, weaknesses, and deficiencies, together with supporting rationale, which the committee or any of its members brought to the attention of the SEB.

(v) Documentation of any clarifications and discussions held with offerors during the source selection process.

(vi) Initial and final reports containing the SEB's consensus findings, including minority reports, if any.

(vii) All presentations from the SEB to the SSA, including those containing the SEB's evaluation and rating of proposals.

(viii) The source selection statement.

(2) Extra copies of offerors' proposals should be stored in a secure facility and shall be properly disposed of after the time period for filing a protest has expired.

(3) Contracting officers shall handle electronic copies of materials containing source selection information in the same manner as the hardcopy information.

[PN 22-02, 23-14]

Subpart 1815.4—Contract Pricing

1815.403 Obtaining certified cost or pricing data.

1815.403-1 Prohibition on obtaining certified cost or pricing data.

(c)(4) Waivers of the requirement for submission of certified cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

1815.403-170 Waivers of certified cost or pricing data.

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

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

1815.403-3 Requiring data other than certified cost or pricing data.

(a)(1) For sole source procurement actions, when requiring data other than certified cost or pricing data, contracting officers must clearly communicate to the contractor the data that will be needed to determine that the proposed price is fair and reasonable. The contracting officer should allow contractors to submit such data in the format consistent with their disclosed estimating practices and shall not require the contractor to use Government price/cost templates, models, or forms. For competitive procurement actions, when requesting data other than certified cost or pricing data, the use of price/cost templates, models, or forms is authorized in those situations where the contracting officer determines, with the concurrence of the Center cost/price analysis subject matter expert, that price reasonableness or cost realism cannot be determined efficiently without the use of the Government template, model, or form; and that there are demonstrated benefits to utilizing this Government template, model, or form that outweigh the offerors' cost to complete the Government template, model, or form. This written

determination shall be included in the contract file and a copy sent to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

(a)(4) A contractor that refuses to provide requested data other than certified cost or pricing data may be rendered ineligible for award unless the head of the contracting activity determines otherwise, in accordance with FAR 15.403-3(a)(4). As such, it is important that contractor refusals to provide requested pricing information receive the attention of management at levels higher than the contracting officer, and that contracting officer's document the extent of their efforts to obtain the requested data. In these circumstances, the basis for the agreed-to price may not be an appropriate basis for comparison in determining price reasonableness in future procurements. Contracting officers should request the necessary data other than certified cost or pricing data again in future procurements of this item/service and not just rely on the prior price as being a valid basis for determining price reasonableness on future procurements.

(b) For other than firm-fixed-price competitions, only data other than certified cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed-price competitions, the contracting officer shall not request any cost data, except for the data specifically required by FAR 22.1103, unless cost analysis is warranted, as permitted by FAR 15.404-1(d)(3). Cost analysis may be warranted in those situations where the price analysis indicated that the requirements may not be fully understood by one or more competing offeror(s) such as when proposed price(s) appear unreasonable or unrealistically low in consideration of the proposed approach(es) giving rise to concerns of poor quality, service shortfalls, or potential default. Under firm-fixed price service contract competitions, labor rate and fringe benefit data may be obtained to be used in future wage determination adjustments under FAR 52.222-41 and FAR 52.222-6. This data, when requested, does not necessarily need to be part of the competition's price evaluation.

1815.403-4 Requiring cost or pricing data.

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of that agreement.

1815.404 Proposal analysis.

1815.404-1 Proposal analysis techniques.

(e)(2)(A) The NASA Technical Evaluation Report Template and NASA Technical Evaluation Guide provide agency-wide guidance to individuals performing a technical analysis of a contractor's proposal. The NASA Technical Evaluation Report Template shall be used to document the technical assessment of all sole source contractor proposals greater than the simplified acquisition threshold.

1815.404-2 Data to support proposal analysis.

(a)(1)(A) When the required participation of the ACO involves merely a verification of information, contracting officers should obtain this verification from the cognizant DCMA office.

(B) When the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMA ACO or DCAA.

(C) Before requesting field pricing support, contracting officers should determine what information can be obtained from NASA resources, so as to be able to tailor field pricing support requests to the minimum amount of information truly needed to conduct the cost/price analysis.

(D) Requests for DCAA audit assistance shall be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services. DCAA audit requests shall be made in accordance with the following:

(*1*) Audit requests shall only be made after the contracting officer performs an analysis and concludes that other resources (DCMA, internal analysis, etc.) will not provide the information necessary to determine that the cost is reasonable and realistic.

(*2*) Audit requests should not be requested for proposed contracts or modifications in an amount less than $10M for Fixed-Price proposals and $100M for Cost-Type proposals unless there are exceptional circumstances which are explained in the audit request.

(*3*) Audit requests shall not be requested for proposal rate and factor analysis/verification. All such requests should be made through the cognizant DCMA ACO.

(*4*) Audit requests must be approved and submitted to DCAA only by Center Cost/Price Analysts. Center Cost/Price Analysts shall coordinate all such requests with Headquarters Office of Procurement, Procurement and Grant Policy Division.

(*5*) Center Cost/Price Analysts will work with the DCAA Headquarters Financial Liaison Advisor (FLA) at email DCAA-FLA-NONDOD@dcaa.mil to arrange contact with field audit offices and facilitate the audit request. Contact Headquarters Office of Procurement, Procurement and Grant Policy Division for name and phone number of current DCAA HQ FLA.

(E) Field pricing support requests from DCMA shall be made in accordance with the following:

(*1*) DCMA field pricing audit requests shall only be made after the contracting officer performs an analysis and concludes that other resources (e.g. internal analysis) will not provide the information necessary to determine that the cost is reasonable and realistic.

(*2*) Proposal rate and factor analysis/verification and business system status requests shall be requested only by Center Cost/Price Analysts. Center Cost/Price Analysts should first check DCMA's Consolidated Business Analysis Repository (CBAR) for this information. If information is not in CBAR, request for this information should be to the cognizant DCMA ACO for your particular procurement. If cognizant DCMA ACO is unknown,

contact the DCMA NASA Support Desk operated by DCMA NASA Product Operations at email NASA_Support_Desk@dcma.mil or phone 210-295-0121 to obtain contact information for cognizant DCMA ACO.

(*3*) DCMA pricing support should be requested through the cognizant DCMA ACO for your particular procurement. If cognizant DCMA ACO is unknown, contact the DCMA NASA Support Desk operated by DCMA NASA Product Operations at email NASA_Support_Desk@dcma.mil or phone 210-295-0121 to obtain contact information for cognizant DCMA ACO.

(F) *Use of contractor to perform contract audit services*.

(*1*) Except as provided under paragraph (a)(1)(F)(2) of this section, the use of a contractor to perform contract audit services is not allowed at contractor locations where DCAA currently conducts contract audit services. In these situations, the contracting officer should elevate any issues with untimely audit services to the Field Audit Office (FAO) manager and/or Regional Audit Manager (RAM). If additional assistance is needed to obtain timely DCAA services, contracting officers may request such assistance from the Headquarters Office of Procurement, Procurement and Grant Policy Division.

(*2*) In those instances in which DCAA has audit cognizance for a particular contractor yet DCAA is unable to perform contract audit services, contracting officers can use a contractor to perform the required contract audit services in lieu of DCAA.

(*i*) For proposal, financial capability, and accounting system reviews, interim and final contract billings, contract audit closing statements, requests for equitable adjustments, contract terminations, defective pricing reviews, compliance with Cost Accounting Standards (CAS), earned value management (EVM) systems, and estimating systems reviews.

(*ii*) For incurred cost audit services, purchasing systems, and other internal controls within the contractor's operational environment, if the portion of the current contractor fiscal year work performed for NASA is more than 50 percent of their business base.

1815.404-4 Profit.

(b)(1)(i)*(*A*)* The NASA structured approach for determining profit or fee objectives, described in 1815.404-470 shall be used to determine profit or fee objectives in the negotiation of contracts greater than or equal to the simplified acquisition threshold that use cost analysis and are–

(1) Awarded on the basis of other than full and open competition (see FAR 6.3);

(2) Awarded under NRAs and AOs; or

(3) Awarded under the SBIR or the STTR programs.

*(*B*)* Although specific agreement on the applied weights or values for individual profit or fee factors shall not be attempted, the contracting officer may encourage the contractor to –

(1) Present the details of its proposed profit amounts in the structured approach format or similar structured approach; and

(2) Use the structured approach method in developing profit or fee objectives for negotiated subcontracts.

(ii) The use of the NASA structured approach for profit or fee is not required for—

(A) A&E contracts;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of materials supplied by subcontractors;

(E) Termination settlements; and

(F) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

1815.404-470 NASA Form 634.

NASA Form 634 shall be used in performing the analysis necessary to develop profit or fee objectives as required in 1815.404-4(b)(1)(i)(A). Contracting officers shall complete and document the profit or fee analysis in the contract file in accordance with the instruction sheet attached to the NASA Form 634.

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

See PIC 23-01 for further guidance.

1815.404-471-1 Modification to structured profit/fee approach for nonprofit organizations.

(a) The NASA structured approach was designed for determining profit or fee objectives for commercial organizations. However, the NASA structured approach shall be used as a basis for arriving at profit/fee objectives for nonprofit organizations (FAR 31.7), excluding educational institutions (FAR 31.3), in accordance with paragraph (b) of this section. It is NASA policy not to pay profit or fee on contracts with educational institutions.

(b) For contracts with nonprofit organizations under which profit or fee is involved, an adjustment of up to 3 percent of the costs in Block 13 of NASA Form 634 must be subtracted from the total profit/fee objective. In developing this adjustment, it is necessary to consider the following factors:

(1) Tax position benefits.

(2) Granting of financing through letters of credit.

(3) Facility requirements of the nonprofit organization.

(4) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

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

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

1815.406 Documentation.

1815.406-1 Prenegotiation objectives.

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum (PPM). The contracting officer shall use the agency "Pre-negotiation Position Memorandum" template when preparing and documenting pre-negotiation objectives.

(ii) A PPM is not required for contracts awarded under the competitive negotiated procedures of FAR 15.3 and 1815.3.

1815.406-170 Reserved.

1815.406-171 Installation reviews.

Each contracting activity shall establish procedures to review all PPMs. The scope of coverage, exact procedures to be followed, levels of management review, cost/price analyst review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.406-172 Headquarters reviews.

(a) When a procurement action meets the threshold for a Headquarters peer review, the contracting activity shall submit to the Headquarters Office of Procurement, Procurement and Grant Policy Division (PGPD) (to hq-dl-hq-op-peer-review@mail.nasa.gov) a copy of the procurement schedule. Based upon this information, the peer review team lead from PGPD will contact the contracting officer to establish the peer review schedule. The peer review team lead will assemble the peer review team to include a combination of HQs and Center senior contracting professionals including, but not limited to, cost and price analysts. The Senior Procurement Executive (SPE) or designee will designate the chair of the peer review team. The Peer review team will assess the cost and price analysis approach with special emphasis given to ensure a complete and thorough analysis is completed and documented.

(b) Headquarters Office of Procurement, PGPD, using the procedures above in paragraph (a), will organize teams of reviewers and facilitate peer reviews for contract actions, with an estimated value of $1 billion or more, as follows:

(1) *Preaward, Competitive Actions:* 1) draft and final solicitations; 2) request for final proposal revisions (if applicable); 3) source selection authority briefing; and 4) contract award document. The HQs Peer review shall be conducted prior to the release of the aforementioned documents.

(2) *Preaward, Non-Competitive Actions:* 1) Prenegotiaiton Position memorandum (PPM); and 2) contract base award or modification (e.g., new contracts, modifications to existing contracts, requests for equitable adjustments, and claims). Contracting Officers shall include the contractor's proposal (s), Government technical evaluation, and all pricing reports (including any audit reports) with the PPM and Price Negotiation Memorandum (PNM) with the contract award

or modification. The HQs Peer review shall be conducted prior to commencing negotiations or executing the contract award or modification.

(3) *Other Actions.* HQs PGPD will conduct a peer review for any contract action the SPE or designee, designates as requiring a peer review regardless of value. Centers may request HQs PGPD peer reviews for acquisitions below the $1 billion threshold. Requests should be submitted to the HQs PGPD Director. HQs PGPD will conduct these reviews upon approval by the Director, PGPD.

(4) *Thresholds.* Use the following criteria to identify actions that are subject to peer review (see also FAR 1.108(c), Dollar thresholds):

(i) If the not-to-exceed amount for an undefinitized contract action or an unpriced change order exceeds the peer review threshold, then the resultant definitization modification(s) will be subject to peer review regardless of actual performance up to the point of definitization.

(ii) For indefinite delivery indefinite quantity (IDIQ) contracts that will establish pricing terms that apply to orders, use the total maximum dollar value for purposes of the peer review threshold. IDIQ contracts that will not establish pricing terms in the basic contract are not subject to peer review, but individual orders that exceed the threshold are subject to peer review.

(iii) For noncompetitive contract actions, use the greater of the following when considering the firm requirement for all supplies or services:

(*A*) The approved Government maximum position.

(*B*) The contractor proposed amount.

(5) *Waivers.* Requests to waive the peer review requirement shall be submitted to the chair of the peer review team, with a copy to the Director of PGPD at (hq-dl-hq-op-peer-review@mail.nasa.gov) and include all necessary information to support the waiver request.

(c) The HQs PGPD peer review team lead will facilitate cross-sharing of best practices and lessons learned with HQs OP and across the NASA Centers. HQs PGPD maintains a peer review repository that will include a compilation of peer review lessons learned and best practices that is available for competitive peer reviews and for noncompetitive peer reviews.

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1815.406-3 Documenting the negotiation.

(a)(i) A price negotiation memorandum (PNM) is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.406-3 shall be reflected in the evaluation and selection documentation to the extent applicable.

(ii) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.406-1, the subsequent PNM need only provide any information required by FAR 15.406-3 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, or subcontractors; wage rate

determinations; or the current status of the contractor's systems). In these situations, the PPM will accompany the PNM during the review process.

1815.407 Special cost or pricing areas.

1815.407-2 Make-or-buy programs.

(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 facilitate submission of a thorough, accurate, and complete proposal.

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.

1815.505 Preaward debriefing of offerors.

The NASA Procurement Debriefing Guide provides agency-wide guidance for preaward debriefings.

1815.506 Postaward debriefing of offerors.

The NASA Procurement Debriefing Guide provides agency-wide guidance for postaward debriefings and is available at the link provided in 1815.505.

1815.506-70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in Part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Senior Procurement Executive. Requests for approval should be submitted through the Procurement Operations Division.

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.

1815.604 Agency points of contact.

(a)(6) Information titled "Guidance for the Preparation and Submission of Unsolicited Proposals" is available on the Internet at http://prod.nais.nasa.gov/pub/pub_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.

1815.606 Agency procedures.

(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.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of contact to the proper installation. Points of contact are also responsible for providing

guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

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.

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.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

(a) The Deputy Assistant Administrator for Procurement serves as the Agency Procurement Ombudsman, except when acting as the Agency Senior Procurement Executive. In these situations, the Director of the Procurement and Grant Policy Division (PGPD) will serve as the Agency Procurement Ombudsman.

(b) Designated individual within the Office of the Center Director at each NASA installation are the procurement ombudsman for program/project contracting activities at their installation. See Procurement Ombudsman / Competition Advocate Points of Contact listing.

(c) The functional owners for institutional programs (e.g. Assistant Administrator for Office of Protective Services) are the procurement ombudsman for their institutional

procurement activities. See Procurement Ombudsman / Competition Advocate Points of Contact listing.

(d) Agency and Center Procurement Ombudsman responsibilities:

(1) Facilitate communications between NASA and interested parties (e.g., offerors, potential offerors, contractors, and industry representatives) in the resolution of matters arising during the pre-award and post-award phases of a procurement. Additionally, interested parties may provide recommendations on the way NASA can improve its acquisition process. However, interested parties must try to resolve their concerns with the contracting officer before consulting with a Procurement Ombudsman.

(2) Review complaints relative to multiple-award task and delivery order contracts, awarded under FAR 16.505 to ensure that all contractors are afforded a fair opportunity to be considered.

(3) Collect all relevant facts to resolve issues raised by interested parties. Collection of source selection and proprietary information will be coordinated with the contracting officer or, if appropriate, the Source Evaluation Board (SEB) chairperson. Procurement Ombudsmen are granted access to source selection and proprietary information and will comply with the requirements in FAR 3.104-5 and 15.201(f). Information shall be obtained from officials responsible for the Freedom of Information Act prior to the release of Agency records.

(4) Agency Procurement Ombudsman handles matters that cannot be resolved at the Center level or those having Agency-wide implications.

(e) The role of the Procurement Ombudsman will not diminish the authority of the contracting officer, Source Evaluation Board, or Source Selection Authority. The Procurement Ombudsman Program does not replace the FAR contract protest or disputes processes. Moreover, communications with a Procurement Ombudsman does not affect the time limits for filing a protest or appealing a contracting officer's final decision as described in FAR Part 33.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at 1852.215-84, Ombudsman, is applicable. This may be accomplished by referencing the clause number with the associated link.

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.

[PN 23-21]

PART 1816
TYPES OF CONTRACTS

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PART 1816
TYPES OF CONTRACTS

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.

Subpart 1816.1—Selecting Contract Types

1816.104 Factors in selecting contract types.

1816.104-70 Contract type for performance-based acquisition (PBA).

(a) PBA is defined in FAR 2.101 and discussed in FAR 37.6. Although FAR Part 37 addresses services contracts, PBA is not limited to these contracts. PBA is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBA specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A PBA is a completion form of contract (something is accomplished). Term/level-of-effort, time-and-materials and labor hour contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

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

1816.203 Fixed-price contracts with economic price adjustment.

1816.203-4 Contract clauses.

(a) In addition to the determination required by FAR 16.203-3, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at FAR 52.216-4.

(d)(2) Contracting officers shall contact the **cognizant Enterprise Pricing Office Pricing Liaison Advocate within the Headquarters Office of Procurement, Enterprise Services Analysis Division**, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the head of contracting activity.

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

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

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

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

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

(b) *Cost-sharing with not-for-profit organizations.*

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

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

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

1816.306 Cost-plus-fixed-fee contracts.

(d) *Completion and term forms.*

(4) Term form contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.

1816.307 Contract clauses.

(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.

(b) In solicitations and contracts containing the clause at FAR 52.216-8, Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

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 shall 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.

Subpart 1816.4—Incentive Contracts

1816.401 General.

(a) See the Award Fee Contracting Guide for additional guidance on the organization and administration of award fee contracts.

(d) Use of an award fee contract requires advance approval by the Senior Procurement Executive. Requests for approval, to use an award fee contract, shall be submitted to Headquarters Office of Procurement, Procurement Strategic Operations Division. Use of an incentive fee or award term contract shall be approved in accordance with FAR 16.401(d). Requests for use of an incentive contract shall be prepared using the applicable agency-wide Determination and Findings (D&F) template. If a specific agency-wide template does not exist, requests shall be prepared in accordance with FAR 1.704. Contracting officers shall provide a copy of approved D&Fs to the Headquarters Office of Procurement, Procurement Strategic Operations Division Director.

(e)(3)(i) Fee-Determining Official and Term-Determining Official shall be the head of the contracting activity unless otherwise delegated in writing.

(f) In accordance with FAR 16.401(f) for Cost Plus Award Fee or Fixed Price Award Fee type contracts, contracting officers shall complete evaluation information in the Award Fee Evaluation System module in the NASA Acquisition Internet Service. (See 1842.1503(c))

[PN 18-01, PN 23-08]

1816.402 Application of predetermined, formula-type incentives.

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.

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 product and commercial service 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.

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.

1816.405 Cost-reimbursement incentive contracts.

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

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

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

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.

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.

(c) For NASA's most significant contracts for design and development programs and projects, with a life-cycle cost of $250 million or more, or otherwise designated by the NASA Associate Administrator, the award fee evaluation period shall be limited to six months for contracts in the implementation phase (i.e. Phases C and D).

[PN 19-01]

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).

(d) *Providing award fee evaluations to Headquarters*. Award fee evaluations for NASA's most significant contracts for design and development programs and projects, with a lifecycle cost of $1 billion or more, shall require additional review prior to the Fee Determination Official (FDO) making a final determination in writing as to the amount of fee to be paid. The FDO shall provide award fee determination letter and performance evaluation board recommendations to a NASA Headquarters, independent panel, comprised of the NASA Assistant Administrator for Procurement or Deputy, NASA Chief Financial Officer or Deputy, NASA General Counsel or Deputy, Program Manager (from a different program), and Center Director (from a Center other than where the program is hosted).

[PN 19-01, PN 22-11]

1816.405-274 Award fee evaluation factors.

See PCD 10-17 for further guidance.

(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 (g)(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.

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 16.401(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 x 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

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.

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.

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.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.

(a) *Description*.

(4)(ii) IDIQ service contract values and task order values shall be expressed only in dollars.

(a)(4)(v) See 1815.7003.

(c) Multiple award preference—

(1)(ii)(D)(1) The authority to make the determination to award a task or delivery order contract authorized at FAR 16.504(c)(1)(ii)(D)(1), is delegated to Senior Procurement Executive. Requests for approval of this determination shall be submitted through the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement. The request for approval shall document that the contracting officer, with input from the requiring organization, considered establishing a defined core portion of the requirement in the single award IDIQ contract by following the procedures listed in paragraph (2) of this section.

(v) To reduce transactional costs, minimize the number of task orders for similar performance requirements, and reduce the administrative burden to the Government, NASA's policy is that single award IDIQ contracts, to the maximum extent possible, contain a core requirement, in addition to the task order(s) that specify discrete requirements. When considering inclusion of a core requirement—

(A) The requiring organization shall identify the known, defined, and recurring requirements anticipated to be awarded under the single award IDIQ contract. If available, the requiring organization shall review the predecessor contract information to identify

any recurring requirements. If the identified recurring requirements will be needed for the duration of the contract, the contracting officer should include these requirements in the core portion of the single award IDIQ contract or justify, with input from the requiring organization, why those requirements cannot be part of the core portion of the IDIQ contract.

(B) The contracting officer and the requiring organization shall analyze the historical staffing levels, labor hours and variations in annual cost of predecessor contract(s). If the staffing levels, labor hours and annual costs were relatively consistent over the previous contract and the requirements are recurring, the contracting officer shall include the recurring requirements in the core portion of the single award IDIQ contract or justify, with input from the requiring organization, why those requirements cannot be part of the core portion of the IDIQ contract.

(2)(i)(A) The authority to make the determination authorized at FAR 16.504(c)(2)(i)(A), is delegated to the head of the contracting activity (HCA).

(B) The authority to make the determination authorized at FAR 16.504(c)(2)(i)(B), is delegated to the HCA.

(ii) The authority to make the determination authorized at FAR 16.504(c)(2)(ii), is delegated to the HCA.

[PN 18-01, PN 20-06]

1816.505 Ordering.

(a) (2) Task and delivery orders shall be issued by the contracting officer. To reduce the administrative burden and transactional costs of issuing numerous task orders, before issuing a task order under a single award IDIQ contract, the contracting officer, in consultation with the contracting officer's representative and resources analyst, as necessary, shall consider—

(i) Including the requirements in the core portion of the contract;

(ii) Adding the new requirement into an existing task or delivery order if the requirement fits within the scope of an existing task or delivery order;

(iii) Avoiding the use of task orders solely to track funding or satisfy financial reporting requirements; and

(iv) That all task and delivery orders shall have clear milestones and/or deliverables.

(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.

[PN 18-01]

1816.505-70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104-70(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with NFS 1843.70.

1816.505-71 Task and delivery order contract ordering period.

(a) 10 U.S.C. 3403 establishes limitations on the ordering period of a task or delivery order contract awarded by NASA. The statute specifies that the ordering period may be for any period up to five years. This period may be subsequently extended for one or more successive periods pursuant to an option or contract modification. In no case may the ordering period exceed a total of ten years unless approved by the Senior Procurement Executive.

(b) The deviation requirement at 1817.204(e)(5) applies to a task or delivery contract with an ordering period of more than five years.

(c) Orders under GSA Federal Supply Schedule contracts must comply with the limitations in paragraph (a) of this subsection if the orders provide for the issuance of subsequent task or delivery orders.

(d) The limitations in paragraph (a) of this subsection do not apply to —

(1) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 3405). These contracts are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505));

(2) Definite quantity contracts; and

(3) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

[PN 23-12]

1816.505-72 Task and delivery order contract performance periods.

(a) The period of performance of orders placed within the contract ordering period shall comply with the bona fide need rule and principles of federal appropriations law.

[PN 18-01]

1816.506 Solicitation provisions and contract clauses.

(j) When using FAR clause 52.216-32, Task-Order and Delivery-Order Ombudsman, insert the website at: https://www.hq.nasa.gov/office/procurement/regs/Procurement-Ombuds-Comp-Advocate-Listing.pdf, that provides installation and Agency Ombudsman, name, address, telephone number, facsimile number, and email address. Use the clause with its Alternate I when the contract will be available for use by multiple agencies (e.g., Governmentwide acquisition contracts or multi-agency contracts). When placing orders under the multiple-award contract available for use by multiple agencies, insert the website at: https://www.hq.nasa.gov/office/procurement/regs/Procurement-Ombuds-Comp-Advocate-Listing.pdf, that provides installation and Agency Ombudsman, name, address, telephone number, facsimile number, and email address in paragraph (d)(2).

[PN 19-03, PN 20-03]

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.

[PN 18-07]

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.601-1 Determination and Findings.

(d)(1) The contracting officer shall use the Time and Materials and Labor Hour Contract/Order Determination and Findings template.

1816.603 Letter contracts.

1816.603-2 Application.

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discrete efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

1816.603-370 Approvals.

(a)(1) The approval authority to issue a letter contract is the head of the contract activity (see NFS definition of "head of the contract activity" at NFS 1802.101).

(2) The head of the contract activity is also the approval authority for any modification to a letter contract that increases the estimated value of the definitized contract. This approval must be obtained prior to issuing the modification.

(b) The contracting officer shall use the agency-wide "Justification and Approval of Undefinitized Contract Actions (UCAs) and Letter Contracts Template" template to document the file for all letter contract actions.

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SPECIAL CONTRACTING METHODS

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PART 1817
SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

1817.105 Policy.

1817.105-1 Uses.

(b) The Senior Procurement Executive, is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105-1(b) is met by the proposed use of multiyear contracting.

Subpart 1817.2—Options

1817.203 Solicitations.

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

1817.204 Contracts.

(e)(1) The 5-year period of performance limitation (basic plus option periods) applies to all NASA contracts regardless of type and other procurement award instruments, except as stated in (e)(2). This includes agreements (e.g. basic ordering agreements, blanket purchase agreements), interagency acquisitions, and orders placed under agreements or awarded under a Federal Supply Schedule or other indefinite delivery/indefinite quantity contracts awarded by other agencies. See 1816.505-71 for limitations on the ordering period of task and delivery order contracts.

(2) The 5-year period of performance limitation in paragraph (e)(1) does not apply to the following circumstances:

(i) Acquisitions for the design, development, test, and evaluation (DDT&E) of end-item systems development and/or hardware production. The period of performance for DDT&E should be consistent with the time needed to complete system development or for hardware production efforts to perform Phase A (concept studies, concept & technology development phase), Phase B (preliminary design & detailed engineering/technology completion phase), Phase C (final design, components/systems fabrication and testing phase), Phase D (system assembly, integration, testing, and launch phase), Phase E (systems and mission operations, sustaining engineering, maintenance support), and Phase F (close-out/decommissioning efforts). It is NASA policy to procure Phase E and F efforts separately from Phase A through D to allow for the maximum number of industry opportunities to compete for awards so long as awards to different contractors will not pose critical integration risks to

NASA. For those acquisitions where it is justified to procure Phases A through D or A through F and the period of performance is expected to exceed 5 years, a deviation is not required if the period of performance is approved as part of the original acquisition plan and the work included in the scope of the contract.

(ii) Phase-in periods of up to 90 days where required for the efficient transition of contracting activities for a period that is concurrent with the predecessor contract in accordance with the use of FAR Clause 52.237-3, Continuity of Services. Phase-in periods may be in addition to the 5-year period of performance limitation.

(iii) Periods of up to 6 months beyond the 5-year period of performance limitation when permitted by FAR Clause 52.217-8, Option to Extend Services, for unplanned, unforeseen circumstances or events that are beyond the control of the contracting officer, such as a protest, provided that the option is exercised consistent with the limits outlined in FAR 37.111 and 17.207(f).

(3) Deviations are not required for the aforementioned circumstances provided the entire period of performance, to include options and phase-in periods for the acquisition are justified and approved in the original written acquisition plan or procurement strategy meeting (PSM), or NASA Broad Agency Announcement, to include, Announcement of Opportunities (AOs), and NASA Research Announcements (NRAs), by the appropriate approving authority, e.g., Senior Procurement Executive approval is required for PSMs held at Headquarters. For any periods beyond those specifically permitted by (e)(2), an approved deviation addressing the requirements in (e)(5) is required.

(4) The program/project office and the contracting officer shall review the requirement at the mid-point of the performance period to ensure that the products or services continue to fulfill NASA's mission needs and that the procurement award instrument continues to provide the best means of satisfying the requirement.

(5) Requests for deviations from the 5-year period of performance limitation policy or for periods beyond those permitted by (e)(2) shall be submitted to the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement and coordinated through the Headquarters Office of Procurement, Procurement and Grant Policy Division for approval by the Senior Procurement Executive. The deviation request shall include justification for exceeding five years or additional periods beyond those permitted by (e)(2). The deviation request and other required documentation, e.g., JOFOC, synopsis, etc. shall identify the specific period of extension to the period of performance. At a minimum, the justification shall discuss planned future assessment of continued performance either prior to exercise of options or at the mid-point of a basic contract with no options. Evidence shall also be included showing that the extended years can be reasonably priced. The justification shall explain why longer than a 5-year period of performance is the most prudent business course of action. The justification shall also address how the longer period of performance will result in obtaining the best value for the Government if the supply or service is readily available in the open market by considering the current market and the uncertainties in future market conditions and by explaining why competition, which acts as a primary guarantor of best value to the Government, is not appropriate for the acquisition.

[PN 19-08]

1817.205 Documentation

(a) The contracting officer shall document the justification for inclusion of options in accordance with FAR 17.205(a) using the Option Justification template.

1817.206 Evaluation.

(a) The contracting officer shall ensure all offers are evaluated, including the basic contract and any option quantities or periods included in the solicitation, as well as any period permitted by FAR 52.217-8, Option to Extend Services, and any other additional options for quantities or services clauses included in the solicitation (See FAR 17.208) except as provided in paragraph (b) of this section.

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under 1817.206(b)(i), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.

1817.207 Exercise of options.

(c)(2) In addition to determining the option fulfills an existing need, the contracting officer shall determine that there is no change in the scope of the option requirements.

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Senior Procurement Executive, submitted thru the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement.

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Senior Procurement Executive, submitted through the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement. The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

1817.207-70 Analysis to support exercise of options.

(a) The contracting officer's determination that exercise of the option is the most advantageous method of fulfilling the requirement shall be based on input and information from the requiring organization. The contracting officer and the requiring organization shall ensure that analysis sufficient to support the determination that option exercise is the most advantageous method is completed in advance of providing the notice to the contractor required by FAR

17.207(a). Sufficient time shall remain in the performance period to allow the acquisition team to pursue appropriate alternative approaches with minimal impact to the program or project in terms of technical, cost, or schedule risk should the analysis conclude that the best programmatic path is not exercising the option.

(b) The analysis required to support the option exercise determination must include consideration of other factors in addition to price. In addition to the other factors contained in FAR 17.207(e), the determination to exercise the option should include, but is not limited to, consideration of—

(1) The contractor's performance in satisfying contract requirements, for example, receiving satisfactory performance ratings (see subpart 1842.15) and the contractor's level of success in implementing and maintaining small business programs (including mentoring arrangements), which were evaluated as part of the source selection process and incorporated into the awarded contract; and

(2) The results of market research activities to identify any technical, engineering or scientific advances that offer programmatic benefits or performance improvements beyond those that are contractually available under the option to be exercised.

(c) The contracting officer shall document the determination to exercise an option using the Option Exercise Determination template.

1817.208 Solicitation provisions and contract clauses.

(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 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions

[PN 19-10]

1817.502 Procedures.

See PIC 24-01 for guidance.

1817.502-1 General.

(a) Written agreement on responsibility for management and administration.

(1) *Assisted acquisitions*. When NASA is the requesting agency of an assisted acquisition, the written interagency agreement outlining each agency's roles and responsibilities

for the management and administration of the contract or order shall be approved one level above the contracting officer. Whether NASA is the requesting or servicing agency a signed copy of the agreement shall be provided to the procurement officer and a copy retained in the contract file.

(b) The business-case analysis required by FAR 17.502-1(b) shall be prepared by the center procurement officer and approved by the Senior Procurement Executive submitted through the cognizant analyst in the Headquarters Office of Procurement, Procurement Strategic Operations Division before submission to the OMB/Office of Federal Procurement Policy.

[PN 19-04]

1817.502-2 The Economy Act.

(a) The Economy Act authorizes NASA to enter into agreements to obtain supplies or services from another agency. The NFS applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transaction does not result in a contract or order, then the NFS does not apply.

(b) The Solutions for Enterprise-Wide Procurement (SEWP) is a government-wide acquisition contract (GWAC) for information technology for government-wide use that is managed by NASA as NASA has been designated an executive agent by OMB pursuant to the Clinger-Cohen Act, 40 U.S.C. 11302(e).

(c) *Requirements for determination and findings*.

(1)(ii) To satisfy the D&F requirement identified in FAR 17.502-2(c)(1)(ii), current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished as economically by contracting directly from commercial sources.

(iv) In addition to the requirements in FAR 17.502-2(c)(1), the D&F must identify the period of performance and explain whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency.

(2) All D&Fs for a servicing agency not covered by the FAR shall be approved by the Senior Procurement Executive submitted to the cognizant analyst in the Office of Procurement, Procurement Operations Division.

(3) When NASA is the servicing agency, a copy of the executed Economy Act determination and findings required by FAR 17.502-2 shall be obtained from the requesting agency and retained in the contract file.

(e) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years. Requests for deviation from the five-year limitation of this section shall require the approval of the head of the contracting activity if the estimated value of the order is $5 million or less, or the Senior Procurement Executive, if the estimated value of the order exceeds $5 million. Requests for deviation shall address—

(1) Why more than five years is required;

(2) Why the work must be performed by the same servicing agency; and
(3) How long beyond the current order the requirement is expected to continue.

(f) A D&F is required for each individual contract action (see FAR 1.702) and any increase permitted by options (see FAR 17.2).
[PN 19-04]

1817.503 Ordering procedures.

See PIC 24-01 for guidance.

(b) The NASA-Interagency Purchase Request (NIPR) (NF-523) or other interagency acquisition form mutually agreed to by the agencies (e.g. SF-1449, OF-347, etc.) shall be used by all NASA contracting officers for placing an order for supplies or services from another agency. If an alternate form is used, it must provide information consistent with FAR 17.503, NFS 1817.503-70, and NIPR/NF-523 to include the purchase request number. Individual NF-523's shall be prepared in accordance with the instructions contained in the NF-523 and shall be numbered in accordance with subpart NFS 1804.16.

(d)(1) When NASA is the servicing agency awarding a contract, the requesting agency shall provide the appropriate information to the NASA contracting officer to execute the justification and approval or determination and findings. A copy of the justification or determination shall be retained in the contract file.

(d)(3) When NASA is the servicing agency and is required to award a contract on behalf of another agency (requesting agency), in addition to the requirements identified in FAR 17.503(d)(3) the NASA contracting officer shall ensure compliance with the requesting agency's regulations, the requesting agency's funding and appropriation limitations, unique agency terms and conditions, the requesting agency's unique statutes, directives, and reporting requirements.

1817.503-70 Order requirements and provisions.
In addition to the requirements identified in FAR 17.503 the following information shall be included in the order, as appropriate:

(a)(1) Provision for acceptance. Include a provision for acceptance, such as, the servicing agency shall provide acceptance of this order no later than 30 days after receipt of the order. The acceptance shall be sent to: Insert NASA installation, office code, and address. The acceptance shall cite the order number and have a typed name, title, and signature of the accepting official, including address, phone number, email address, and facsimile number.

(2) If the servicing agency is a Military Department, the Military Department concerned will, within 30 days after receipt of a NASA-Interagency Purchase Request (NIPR), forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2. Each DD Form 448-2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(3) If the servicing agency is a Civilian Agency, acceptance should occur within 30 days after receipt of the NIPR and may be accomplished by some other form or method of establishing acceptance other than the DD Form 448-2, Acceptance of MIPR.

(b) *Provision for Payments*. Provide instructions for submitting invoices/billings and payment terms related to payments to be made by the requesting agency. Provide instructions on the level of detail necessary to make payment of the NIPR, to include how often payments will be made, and any other pertinent information. Payment provisions should identify the address of the requesting agency for the servicing agency to submit invoices to, to include, providing detailed instructions for transmitting the funds, and whether the servicing agency shall submit invoices via the online Intra-Governmental Payment and Collection (IPAC) System or SF1080/SF1081 or equivalent form to be utilized. Information about IPAC is available at http://fms.treas.gov/goals/ipac/index.html. Except when agreements provide that reimbursement is not required, payments to the Civilian Agencies or Military Departments shall be made by the NASA office designated in Block 9 of the NASA-Interagency Purchase Request upon receipt of Standard Form 1080.

(c) *Provisions for contract administration, audit, oversight, and reporting requirements*. Provide contract administration requirements and responsibilities appropriate for the type of contract and scope of work for the particular acquisition.

(d) *FAR and NFS clauses*. The order shall include appropriate FAR and NFS clauses for: the accountability and reporting of property; relating to intellectual property, including data rights, patent rights, and reportable new technology property; security; occupational health and safety; environmental requirements; and other clauses appropriate for the particular acquisition, as applicable.

(e) *Technical representative and contact information*. The order shall identify the technical representative as well as describe the individual's roles, responsibilities, and limitations.

(f) *Description of the effort*. The order shall include a complete description of the supplies or services to be delivered, the scope of work, including deliverable requirements with delivery dates, and a reference to any proposal received from the servicing agency.

(g) *Authority of the order*. The order shall cite the authority for each agency to enter into the interagency acquisition. When NASA is the requesting agency, the Economy Act (31 U.S.C 1535) shall be cited when, in accordance with FAR 17.502-2(b), more specific statutory authority does not exist.

(h) *Amount of the order*. Identify funding (incremental or fully-funded) amount(s) and accounting and appropriation data (e.g., purchase request number, funds citation.).

(i) *NIPR number*: To the extent feasible, all documents (including acceptances, contracts or orders, correspondence, shipping documents, work or project orders, and Standard Form 1080

(Voucher for Transfer between Appropriations and/or Funds) billings) should reference the NIPR number and the item number.

(j) *Changes in estimated total prices*. When another agency determines that the estimated total price (Block 7, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment or modification will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the Cognizant NASA contracting office shall forward to the Civilian or DOD contracting activity an amendment or modification to the NASA-Interagency Purchase Request.

[PN 19-03]

1817.504 Agency reporting requirements.
Upon request, center procurement officers shall submit information on interagency acquisitions to be included in the Agency's annual report to OMB to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

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.

1817.7001 Down-selections in phased acquisitions.

1817.7001-1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the initial phase solicitation will also lead to

subsequent phase award(s), the decision to use a down-selection strategy must be made prior to release of the initial solicitation. Accordingly, all phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or PSM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in a subsequent phase, down-selection is inappropriate. In this case, the phases should be contracted for separately without a down-selection.

(c) With one exception, both the initial and subsequent phase(s) of an acquisition down-selection process are considered to be full and open competition if the procedures in 1817.7001-4 and 1817.7001-5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205 and 1804.570-1.

1817.7001-2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that a preceding phase contractor will be the subsequent phase contractor, the evaluation factors for initial phase award must specifically include evaluation of the offerors' abilities to perform all phases.

1817.7001-3 Down-selection milestones.

(a) When sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. These activities should commence as early as practicable. The initial phase contracts should be structured to allow for down-selection at a discrete performance milestone (e.g., a significant design review or contract completion) of a design maturity sufficient to allow for an informed selection decision. This will avoid time gaps between phases and eliminate unnecessary duplication of effort.

(b) The appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if a two-phased acquisition strategy calls for formal completion of initial phase effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for subsequent phase award and performance to carry all initial phase contractors through PDR, the initial phase contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and the subsequent phase performance begun at the completion of the PDR option.

1817.7001-4 Synopsis.

(a) Each phase of a phased acquisition not performed in-house must be synopsized in accordance with FAR 5.201 and must include all the information required by FAR 5.207 Time gaps between phases should be minimized by early synopsis of subsequent phase competition. The synopsis for the initial competitive phase should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Competitions for identified subsequent phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1817.7001-5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsized in accordance with FAR 5.201 and 5.203.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phase(s) must identify the current phase contractors.

1817.7001-5 Progressive competition.

(a) To streamline the acquisition process, the preferred approach for NASA phased acquisitions is the "progressive competition" down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all

the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offeror must be advised of all requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(c) A key feature of the progressive competition technique is that a formal solicitation is normally not required. However, when the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is no longer valid, a new solicitation shall be issued for the next phase.

(d) Subsequent phase proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that the late proposal information in paragraph (c)(3) of FAR 52.215-1 Instructions to Offerors—Competitive Acquisition, applies to the due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the initial solicitation.

(5) All required clause changes applicable to new work effective since the preceding phase award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the preceding phase contractors, it is also likely that a new, formal solicitation is necessary for the subsequent phase and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

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.

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EMERGENCY ACQUISITIONS
(September 2015)

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PART 1818
Emergency Acquisitions

1818.000-70 Pre-Emergency Planning.

(a) Contracting officers shall include in Performance Work Statements or Statements of Work in contracts for major, on-site support activities, such as general facilities support/base operations; property management; security/guard/law enforcement services; information technology services to include information technology infrastructure maintenance and service, language substantially the same as follows:

Emergency Preparedness and Response

The Contractor's obligation may include resolution of unusual or emergency situations. The Contractor may be required to assist NASA, within the general scope of work, in preparation for, or in response to emergencies. Obligations under this requirement shall only arise when one or more of the criteria at FAR 18.001, enabling NASA to utilize "Emergency Acquisition Flexibilities," are met. If the emergency preparedness and response requirements result in changes to the contract, all contract adjustments will be processed in accordance with the changes clause of this contract.

(b) Contracting officers should list contracts that contain the language referenced in 1818.000-70(a) in the Center Continuity of Operations Plans.

PART 1819
SMALL BUSINESS PROGRAMS

(Revised August 9, 2017)

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PART 1819
SMALL BUSINESS PROGRAMS

See PCD 20-10 for further guidance related to FAR 19.

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.

(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, representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices will collaborate to reduce barriers to entry and to increase opportunities for small business concerns, identified in paragraph (a)(i) of this section, and Historically Black Colleges and Universities or Minority Institutions.

(d) The Associate Administrator (AA) for the Office of Small Business Programs (OSBP) is the Agency official responsible for carrying out the duties in FAR 19.201(d)**.**

[PN 22-05, PN 23-20]

1819.202 Specific policies.

(a) Requirements. The contracting officer shall complete a NASA Form (NF) 1787, Small Business Coordination, for the following:

(1) All acquisitions over the simplified acquisition threshold.

(2) All acquisitions above the micro-purchase level and below the simplified acquisition threshold that are not set-aside for small business.

(3) All modifications adding new work that is outside the authority of the "Changes" clause in the existing contract.

(4) All task and delivery orders above the micro-purchase level against multiple award contracts, GWACs, and FSS that are not set-aside for small business.

(5) All orders above the micro-purchase level against Basic Ordering Agreements and Blanket Purchase Agreements that are not set-aside for small business.

(6) All acquisitions where contract bundling or consolidation is contemplated (see FAR 2.101).

(b) Exceptions. A NF 1787 is not required for the following:

(1) Modifications that do not increase the scope of the contract, including the exercising of a contract option which is within the scope of the existing contract, provided the NF 1787 covering the basic contract was concurred by the Center Small Business Specialist (SBS) and the SBA PCR.

(2) Repeat acquisitions, above the micro-purchase level, for the same supplies or services ordered previously, and the supplies or services are only available from a source that is other than a small business. The Center Small Business Specialist and the SBA PCR must have concurred previously via a Master NF 1787 that the requirement qualifies for this exception.

(3) Orders issued under a single-award, indefinite-delivery contract.

(4) Solicitations and contracts under the SBIR/STTR program.

(5) Acquisitions from mandatory sources set forth in FAR 8.002(a).

(6) Broad Agency Announcements.

(c) Repeat buys. A Master NF 1787 can be used for repeat acquisitions, above the micro-purchase level, for the same supplies or services that are only available from a source that is other than a small business. The contracting officer can propose a Master NF 1787 and document its use in the form's "Remarks" section (Block 11). The Master NF 1787 shall be concurred by the Center SBS and the SBA PCR, and a copy of the Master NF 1787 shall be retained in the contract file for each acquisition.

(d) Procedures.

(1) The NF 1787 shall be submitted to the Center SBS and SBA Procurement Center Representative (PCR) for concurrence before synopsis in the Governmentwide point of entry (GPE). The contracting officer shall submit the NF 1787A to the Center SBS, when required to be completed, see 1810.002.

(2) For those requirements exempted from synopsis, the NF 1787 shall be submitted to the Center SBS and SBA PCR for concurrence prior to the release of the solicitation or offering of the requirement to the SBA under the 8(a) program.

(3) Contracting officers shall coordinate acquisition strategies or plans contemplating consolidation or bundling with the Center SBS and SBA PCR at least 30 working days before issuing a solicitation. The Center SBS shall notify the Headquarters Office of Small Business Programs (OSBP) when acquisition strategies involve contract consolidation or bundling that is determined to be unnecessary or unjustified. See FAR 2.101 and FAR 7.107 for the definitions of consolidated and bundled contracts.

(4) The contracting officer shall make every reasonable attempt to coordinate and collaborate with the SBA PCR in small business determinations. However, the small business determination may be made unilaterally by the contracting officer, in consultation with the Center SBS, when—

(i) The SBA PCR is unavailable;
(ii) The SBA PCR declines consideration of the action; or
(iii) The acquisition is covered under an existing Center/SBA memorandum of agreement; or
(iv) The SBA PCR does not request an extension or respond within—
A. Two (2) working days after receipt, but no longer than five (5) working days under unusual circumstances; or
B. Fifteen (15) working days for acquisitions involving consolidation or bundling.

(5) If the Center SBS or SBA PCR does not concur with the contracting officer's recommendation, the contracting officer shall comply with the procedures for resolution set forth at FAR 19.502-8 and NFS 1819.502-70.

[PN 22-05]

1819.202-70 Historically Black Colleges and Universities and Minority Institutions.
See guidance at 1826.302 regarding prime and subcontracting objectives for Historically Black Colleges and Universities (HBCU) and Minority Institutions (MI).

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

1819.302 Protesting a small business representation or representation.

(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, Headquarters Office of Small Business Programs, and the SBA.

Subpart 1819.5—Set-Asides for Small Business

See PCD 19-02 for further guidance related to FAR 19.5.

1819.502 Setting aside acquisitions.

1819.502-70 Set-aside appeals.

(a) If the center small business specialist or PCR does not concur with the contracting officer's decision, it shall be referred to the procurement officer for resolution.

(b) If the procurement officer approves the contracting officer's decision and the SBA appeals under FAR 19.505(c), the procurement officer shall forward the required written justification, including a history of discussions between the center and the SBA and rationale for the decision, to the Headquarters Office of Procurement, Procurement Strategic Operations Division and a copy of the entire package to the Headquarters Office of Small Business Programs.

(c) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of nonconcurrence if a recommended set-aside action is not implemented.

1819.502-3 Partial set-asides.

1819.502-370 NASA reporting requirements.
The contracting officer shall separately report, in accordance with 1804.6, awards of the non-set-aside portions of small business set-aside acquisitions.

1819.505 Rejecting Small Business Administration recommendations.
See 1819.502-70.

Subpart 1819.6--Certificates of Competency and Determinations of Responsibility

1819.602 Procedures.

1819.602-1 Referral.

(a) On proposed awards exceeding the simplified acquisition threshold, the contracting officer should consider requesting a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible. The scope of the preaward survey request should be limited to those elements of responsibility that are questioned.

(2) The contracting officer shall forward a copy of the referral to SBA through the procurement officer to the Headquarters Office of Small Business Programs.

1819.602-3 Resolving differences between the agency and the Small Business Administration.

1819.602-370 NASA procedures.

(a) When agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall forward to the Headquarters Office of Procurement, Procurement Strategic Operations Division, on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a COC, and the contracting officer's comments. The contracting officer shall suspend acquisition action until informed by Headquarters Office of Procurement, Procurement Strategic Operations Division of the final decision in the case.

(b) If the referral to SBA should be withdrawn and a contract awarded without benefit of a COC, the Headquarters Office of Procurement, Procurement Strategic Operations Division shall inform the contracting officer.

(c) If the Office of Procurement agrees with the contracting officer's recommended appeal action, the Senior Procurement Executive shall forward the appeal through the Office of Small Business Programs to SBA Headquarters.

Subpart 1819.7—The Small Business Subcontracting Program

1819.704 Subcontracting plan requirements.

(a)(10)(iii)(A) The Individual Subcontracting Report shall include goals as a percent of total contract value as well as a percent of total subcontract dollars.

(b)(1) Master subcontracting plans – Pursuant to FAR 19.704(b), offerors and contractors may submit or establish, a master subcontracting plan on a plant or division-wide basis. The master subcontracting plan, which is effective for three years, may be approved by a contracting officer at another Federal agency within the past three years, or it may be an original master subcontracting plan first submitted to NASA for approval. In either case, contracting officers may consider incorporating a master subcontracting plan into an individual subcontracting plan for a specific NASA contract once the subcontracting goals for that contract are established.

(2) Contracting officers are not required to consider or accept a master subcontracting plan approved by a contracting officer at another Federal agency when—

(i) The master plan is not deemed to be compliant with FAR 52.219-9;
(ii) There is no evidence of a contracting officer's approval of the master plan;
(iii) The date of contracting officer approval of the master plan exceeds three years;
(iv) The master plan is not accompanied by goals for the specific requirement; or
(v) The master plan does not address deviations deemed necessary by the contracting officer to satisfy the requirements of a specific contract.

(3) For purposes of approving subcontracting plans, contracting officers should fully evaluate an offeror's master subcontracting plan previously approved by a contracting officer at another Federal agency. The cognizant NASA contracting officer is responsible for reviewing and approving a master subcontracting plan first submitted to NASA. When a contractor submits more than one initial master subcontracting plan to NASA in the same timeframe, the center contracting officer administering the contract having the greatest contract value is responsible for reviewing and approving the contractor's master subcontracting plan for the agency.

(4) The master subcontracting plan may be used by all centers after a NASA contracting officer approves it. A copy of all center approved master subcontracting plans shall be forwarded by email to the cognizant program manager in the Headquarters Office of Small Business Programs for awareness.

[PN 18-03]

1819.705-2 Determining the need for a subcontracting plan.

(c) The contracting officer shall use the agency-wide template entitled, "Determination to Waive the Requirement for a Subcontracting Plan When No Subcontracting Possibilities Exist", when there is a determination that no subcontracting possibilities exist under the contract in accordance with FAR 19.705-2. The Determination shall be submitted for the concurrence of the Center Small Business Specialist (SBS) prior to approval by the Head of Contracting Activity. The Office of Small Business Programs shall send a copy to the Small Business Administration Procurement Center Representative (PCR).

(d) Solicitations for competitive negotiated acquisitions shall require proposed subcontracting plans with initial proposals (see 1819.708(b)(1)). For sole source negotiated acquisitions, the contractor shall be required to submit a proposed subcontracting plan with the proposal.

(f) When a small business entity re-represents its size status from small to other than small either through size growth or novation, the contracting officer shall decide whether a subcontracting plan is required or not. If the contracting officer determines that there are no subcontracting opportunities the CO shall use the agency-wide template entitled, "Determination to Waive the Requirement for a Subcontracting Plan When No Subcontracting Possibilities Exist", when it's determined that the submission of a subcontracting plan is not practical. The Determination shall be submitted for the concurrence of the Center Small Business Specialist (SBS).

If due to a contract modification or a size re-representation it is determined that subcontracting opportunities exist a subcontracting plan will be requested. The plan will be submitted to the Center SBS for review and comment. The SBS will recommend acceptance and approval of the plan for incorporation into the contract. The subcontracting goals shall apply from the date of incorporation of the subcontracting plan into the contract and the contractor's achievements must be reported on the individual subcontracting reports on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

[PN 23-13, PN 24-01, PN 24-08]

1819.705-4 Reviewing the subcontracting plan.
For unrestricted solicitations:

(a) NASA Policy Directive (NPD) 5000.2, Small Business Subcontracting Goals, establishes steps that shall be performed to ensure that the maximum practicable subcontracting opportunities.

(b) The recommended SDB goals in solicitations shall be expressed as a percentage of total contract value and shall not exceed 5%.

(c) When opportunities for subcontracting are so limited for a particular small business subcategory such that the contracting officer is unable to suggest a subcontract goal, the contracting officer can forego establishing a recommended subcontracting goal for that subcategory in the solicitation.

1819.705-470 Acquisition-specific subcontracting goals.

Section 1819.201 addresses agencywide goals at the combined prime and subcontract levels. Appropriate subcontracting goals for an individual acquisition, however, are to be independently determined on the basis of the specific circumstances of the acquisition, consistent with FAR 19.705-4, and not on the basis of an agencywide or center goal. Acquisition-specific subcontracting goals should reflect maximum practicable opportunities for all categories of small business concerns to participate in NASA programs, consistent with efficient performance. Subcontracting plans shall express goals as a percentage of both (1) total contract value and (2) total subcontract dollar. Contracting officers shall use the methods outlined in NPD 5000.2 to establish reasonable subcontracting goals for small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, women-owned small business concerns, and Historically Black Colleges & Universities and Minority Institutions.

1819.705-6 Postaward responsibilities of the contracting officer.

(f)(3)(i) Acknowledging or rejecting receipt of SSRs for Individual Plans in the Electronic Subcontracting Reporting System (eSRS) will be accomplished by the Headquarters Office of Small Business Programs. The authority to acknowledge or reject receipt of SSRs for commercial subcontracting plans resides with the cognizant contracting officer.

[PN 23-05]

1819.708 Contract clauses.

(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.

Subpart 1819.8—Contracting with the Small Business Administration (The 8(a) Program)

1819.800 General.

(f) NASA and the Small Business Administration maintain a Partnership Agreement (PA) to allow direct contracting with 8(a) firms by NASA.

(1) By PA dated November 27, 2012, between the Small Business Administration (SBA) and NASA, the SBA has delegated to each NASA installation and to NASA contracting officers, its authority under section 8(a)(1)(A) of the Small Business Act to enter into section 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible section 8(a) program Participants. This authority is delegated and shall remain in effect until modified or cancelled.

(2) The PA provides for the award of both contracts and purchase orders. It encompasses all competitive and non-competitive requirements offered and accepted by SBA into the 8(a) program including but not limited to: Acquisition of Commercial Products and Commercial Services (FAR Part 12); awards under the Simplified Acquisition Procedures (FAR Part 13); awards resulting from Sealed Bidding (FAR Part 14); Contracting by Negotiation (FAR Part 15); and Construction and Architect Engineer Contracts (FAR Part 36).

(3) The PA allows NASA to award contracts and purchase orders directly to the 8(a) Participant. A SBA signature on the contract or purchase order is not required.

(4) The PA modifies certain sections of FAR 19.8 as listed below. For any section not listed below, the contracting officer shall follow FAR 19.8.

1819.801 Reserved.

1819.804 Evaluation, offering, and acceptance.

1819.804-2 Agency offering.

(d) The notification shall clearly indicate that the offer is being processed under the PA. All notifications shall be faxed or e-mailed to the SBA when possible. In addition to the information required by FAR 19.804-2(a)-(c), the notification shall address whether—

(1) SBA acceptance or rejection of the offer is required to be transmitted to NASA within five working days of receipt of the offer. The letter should request that the SBA response be faxed or e-mailed to NASA;

(2) For sole source offers above the simplified acquisition threshold, that acceptance shall include a size verification and a determination of the 8(a) Participant's program eligibility, and that upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(3) For competitive offers above the simplified acquisition threshold, that upon acceptance, the contracting officer will solicit offers and conduct source selection.

(4) For acquisitions valued at or below the simplified acquisition threshold no offering or acceptance letter is required.

1819.804-3 SBA acceptance.

See **PCD 23-03A** for guidance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within five working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold. The contracting agency may grant an extension of these time periods. For actions, above the simplified acquisition threshold and under $20M, if SBA does not respond with a notification of rejection within five working days of receipt of an offer, the contracting activity may assume acceptance on the sixth working day. On actions greater than $20 million, if an acceptance or rejection has not been received from the SBA District Office on the sixth working day, the contracting officer shall seek acceptance from the Associate Administrator of SBA's Office of Business Development (AA/BD). If a reply is not received from the AA/BD within five working days after the AA/BD receipt of the offer, on competitive actions the contracting officers may assume acceptance on the sixth working day.

1819.804-70 Release for non-8(a) competition.

(a) Renewals or follow-on awards to an existing 8(a) contract must remain in the 8(a) program unless SBA agrees to release it. Written requests will be sent to the AA/BD for concurrence. Release decisions will be made within ten working days.

(b) In the request include whether the agency is achieving its SDB, HUBZone, SDVOSB, WOSB and small business goals. The request shall address what other SB program will be used in lieu of the 8(a) program (HUBZone, SDVOSB, WOSB or small business). Release from the 8(a) program is unlikely if another SB program is not used.

(c) The release requirement does not apply to task or delivery orders accepted into the 8(a) program.

1819.805-2 Procedures.

(b)(1) In negotiated acquisition, the SBA will determine eligibility when the successful offeror has been established by the agency and the contracting officer has submitted a request for eligibility determination unless a referral has been made under FAR 19.809, in which case the SBA will determine eligibility at that point. The SBA shall issue a determination for the apparent successful offeror within five working days from the request of the contracting officer.

1819.805-2-70 Joint Ventures.

The rules governing 8(a) Program joint ventures (JV) are prescribed in 13 CFR § 124.513, with additional regulations applying to the 8(a) Program found throughout 13 CFR § 124. The 8(a)

participant(s) to an 8(a) JV shall be certified at the time of proposal submission, and in accordance with 13 CFR 124.513(e)(1), the SBA shall approve the 8(a) JV agreement prior to contract award. Since it takes time for SBA to approve an 8(a) JV agreement, the contracting officer should notify the SBA Procurement Center Representative (PCR) when an 8(a) JV offeror submits a proposal in response to an 8(a) set-aside acquisition. The SBA will only approve 8(a) JV agreements under 8(a) set-aside acquisitions when the 8(a) JV is the apparent successful offeror; however, contract award may be delayed if the SBA is first notified or begins the approval process too close to the anticipated date for contract award.

1819.806 Pricing the 8(a) contract.

(a) The contracting officer shall price the 8(a) contract in accordance with FAR 15.4. If required by FAR 15.4, the contracting officer shall obtain cost or pricing data from the 8(a) contractor.

1819.808 Contract negotiation.

1819.808-1 Sole source.

(a) The contracting officer is responsible for initiating and conducting negotiations.

(b) The contracting officer shall negotiate directly with the 8(a) Participant. If requested by the 8(a) Participant, the SBA may participate in negotiations.

(c) The contracting officer shall evaluate and document the 8(a) Participant's ability to comply with the requirements of FAR 52.219-14 Limitations on Subcontracting.

1819.811 Preparing the contracts.

1819.811-1 Sole source.

(a) The contract to be awarded by the agency shall be made directly to the 8(a) Participant and shall be prepared in accordance with agency procedures. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 shall be used as required in FAR 36.701(a).

(b) The contract to the 8(a) Participant shall—

(1) Cite 10 U.S.C. 3406 as the authority for use of other than full and open competition;

(2) The "Issued by" block shall identify the awarding NASA office;

(3) The section 8(a) Participant's name and address shall be listed as the contractor;

(4) Include the clause at FAR 1852.219-11, Special 8(a) Contract Conditions, which allows for direct award to the 8(a) contractor and identification of the cognizant SBA district office for the 8(a) contractor; and

(5) Include the name of the NASA Center/Installation in the NASA contracting officer title in the signature block.

(c) The contracting officer shall provide an executed copy of the contract or purchase order to the SBA servicing District Office within 15 working days of contract award.
[PN 23-04, PN 23-12]

1819.811-2 Competitive.
Awards shall be prepared in accordance with 1819.811-1.

1819.811-3 Contract clauses.

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

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

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

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

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

1819.812 Contract administration.

(b) The contracting officer shall distribute copies of all contracts and modifications within 15 working days of award.

(d) Contracting Officers must coordinate any planned requests for waiver of an 8(a) contract termination with the Headquarters Office of Procurement, Procurement Strategic Operations Division. The Headquarters Office of Procurement will review and coordinate the package with Headquarters offices, as appropriate, and will either forward the request to the Administrator for signature or will advise the Contracting Officer of the decision not to submit the request to the SBA.

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) as authorized by the Small Business Administration in accordance with 13 CFR 125.10. 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, other Government, 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 (MPA) 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.
[PN 23-20]

1819.7202 Eligibility.

(a) To be eligible to participate as a mentor, an entity must be—

(1) A large business prime contractor or research institution performing with at least one approved subcontracting plan (other than a commercial plan) negotiated with NASA, pursuant to FAR subpart 19.7. 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. However, the NASA MPA will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan.

(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 NASA Mentor Protégé Program Office (MPPO), the entity is debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4.

(b) To be eligible to participate as a protégé, an entity must be eligible for award of Federal contracts in accordance with FAR subpart 9.4, i.e., entities cannot be suspended or debarred at the time of application for the program and must be classified as one of more of the following entities or socio-economic categories as defined by FAR part 2:

(1) Small disadvantaged business;

(2) Women-owned small or economically disadvantaged women owned concern;

(3) Veteran-owned or service-disabled veteran-owned small business concern;

(4) Historically underutilized business zone concern;

(5) Historically Black College and University or Minority-Serving Institution;

(6) Current NASA Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Phase II Company; or

(7) An entity participating in the AbilityOne Program.

(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.

[PN 23-20]

1819.7203 Mentor-protégé advanced payments.
If advance payments are contemplated, the mentor must first have the advance payments approved by the contracting officer in accordance with FAR Subpart 32.4.

[PN 23-20]

1819.7204 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors will submit a complete agreement package to the contracting officer, contracting officer's representative (COR) andge to the cognizant Small Business Specialist at the NASA Center. The submission package must include the following:

(1) A signed MPA;

(2) A signed protégé application.

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

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

(b) The NASA MPPO may require additional information as requested upon agreement submission.

(c) 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.

[PN 23-20]

1819.7205 Award Fee Pilot Program.

(a) Mentors may 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 each award fee determination 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) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

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

(d) The Award Fee Program is an addition to the credit agreement, reference 1819.7206. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

[PN 23-20]

1819.7206 Credit agreement.

In a MPA (as referenced in section 6 "Agreements" of the MPP Guidebook), a mentor receives credit toward its subcontracting goals. The credit agreement only applies to mentors with an Individual Subcontract Plan.

(a) Costs incurred under a credit agreement are applied on a one-to-one basis toward applicable subcontracting goals, under a Federal agency subcontracting plan (FAR subpart 19.7).

(b) The credit is reported on the mentor's individual subcontracting report (ISR) in the comments section twice a year and in the Summary Subcontract Report (SSR) once a year. The MPPO will verify the dollars contained in the annual reports.

[PN 23-20]

1819.7212 Reporting requirements.

(a) Mentors must report on the progress made under active MPA annually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each 12-month period of performance commencing with the start of the agreement.

(c) Each annual report must include the following data on performance under the MPA:

(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) Annually, the protégé must provide an independently developed progress report using the annual report template, on the progress made during the prior twelve 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 annual report required by paragraph (d) of this section must be submitted separately from the mentor's annual report submission.

(f) Reports for all agreements must be submitted to the NASA Mentor-Protégé Program Manager, the mentor's cognizant administrative Contracting Officer, and their cognizant center Small Business Specialist.

(g) Templates for the annual report and the Post-Agreement report and guidance for their submission are available at: http://www.nasa.gov/osbp/mentor-protege-program.

[PN 23-20]

1819.7213 Reporting allowances.

The mentor may include its developmental expenditures from the annual report, reference 1819.7212, in its reported dollars in its Summary Subcontracting Report (SSR) in the Electronic Subcontracting Reporting System (eSRS).

(a) If the protégé´ is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(b) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the ''Remarks'' section of each report.

(c) Expenditures for AbilityOne protégé's cannot be included in SSR's or ISR's since there is no such reporting category for SSR's or ISR's**.**

[PN 23-20]

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

1819.7300 Policy

The NASA Shared Services Center (NSSC) is designated as the Agency's sole buying location for the award and administration of all Phase I, Phase II, and Phase III contracts awarded under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

[PN 21-04]

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 USC 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.

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 Pub. L. 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 Pub. L. 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 Pub. L. 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 Pub. L. 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 Pub. L. 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 contracts awarded under the Small Business Technology Transfer (STTR) Program and the Small Business Innovation Research (SBIR) Program established pursuant to Pub. L. 97-219 (the Small Business Innovation Development Act of 1982).

Part 1820—Reserved

NO NFS TEXT

Part 1821—Reserved

NO NFS TEXT

PART 1822
APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

(Revised September 27, 2017)

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PART 1822
APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.000-70 Scope of part.

(a) Contracting officers should consult with the Center's Contractor Industrial Relations Officer (IRO) or designee when taking any of the actions prescribed or authorized in FAR part 22 or NFS part 1822.

(b) All communications with the Department of Labor (DOL) national office of a labor organization, on labor relation matters such as disputes shall be conducted through the Center's Contractor IRO who will coordinate any information and requirements with the Headquarters Contractor IRO prior to contacting the DOL or the labor organization.

(c) Proposed responses to actions (e.g. labor disputes, work stoppages, plant seizures, injunctive actions, labor relations adversely affecting NASA) that are expected to substantially impact the activities of NASA or other Government agencies shall be coordinated with the Center's IRO for approval by the Headquarters Contractor IRO.

(d) The NASA Industrial Labor Relations Guide provides agency-wide guidance to individuals involved in the acquisition of supplies or services (including construction) applicable to labor laws.

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101-1 General.

(d) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall, in coordination with the Center Contractor (IRO)—

(i) Advise in writing both the prime contractor and the head of the union local of the expected impact of the strike on NASA programs and of the actions NASA is planning to take to protect the Government's interest and prevent any further delay in the accomplishment of NASA's mission. If the strike is at a subcontractor's plant, only the prime contractor may contact the subcontractor since there is no contract between NASA and the subcontractor;

(ii) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(iii) Consider taking the actions described in FAR 22.101-4.

1822.101-3 Reporting labor disputes.
Reports of potential or actual labor disputes affecting NASA acquisitions, operations, or services shall be coordinated through the Center's IRO for submission to the Headquarters Contractor IRO in accordance with NPR 5200.1.

1822.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a)(3) The contracting officer shall obtain approval from Headquarters Contractor Industrial Relations Officer.

1822.101-70 Admission of labor representatives to contract sites.
NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if such activities are compatible with safety and security regulations and performance of the contract work involved in accordance with NPR 5200.1.

1822.103 Overtime.

1822.103-4 Approvals.

(a) The contracting officer (CO) is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the contracting officer shall obtain the concurrence of other appropriate approving officials and seek agreement regarding the contracts under which premiums will be approved. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's written statement that approval will not affect performance or payments under any ongoing contract of another contracting office.

1822.103-5 Contract clause.

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

Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay.

(c) The Headquarters Contractor Industrial Relations Officer (IRO) is the agency head designee.

(d) The disposition of funds withheld or collected for liquidated damages shall be in accordance with direction of the Headquarters Contractor IRO.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

All contacts with the Department of Labor required by FAR Subpart 22.4, except for wage determinations, shall be coordinated with the Center's Contractor IRO. The Center's Contractor IRO will coordinate the information and requirements with the Headquarters Contractor IRO.

1822.404-2 General requirements.

(c)(5) Contracting officers should obtain clarifications and coordinate with the Center's IRO concerns about the proper application of wage rate schedules to the type or types of construction project involved prior to contacting the DOL Administrator, Wage and Hour Division.

1822.406-8 Investigations.

(a) The contracting officer is responsible for conducting investigations of labor violations relative to contracts under their cognizance in coordination with the Center's Contractor IRO. Detailed procedures on how to conduct investigations are found in the NASA Industrial Labor Relations Guide.

(d) Reports of substantial violations or refusals to pay shall be sent to the Headquarters Contractor IRO.

1822.406-9 Withholding from or suspension of contract payments.

(c)(4) Headquarters Contractor IRO shall determine the disposition of contract payments withheld or contract payments suspended and any assessed liquidated damages.

1822.406-13 Semiannual enforcement reports.

Procurement officers shall submit semiannual enforcement data within 20 days after the end of the specified reporting periods to the Headquarters Office of Procurement, Procurement and Grant Policy Division. Negative statements are required.

Subpart 1822.5—Reserved

Subpart 1822.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

1822.604 Exemptions.

1822.604-2 Regulatory exemptions.

(b) Requests for exemptions shall be submitted in writing through the contracting officer, in coordination with the Center's Contractor Industrial Relations Officer (IRO) to the Headquarters Contractor IRO.

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.

1822.804-2 Construction.

(b) The Headquarters Office of Procurement, Procurement and Grant Policy Division will furnish each procurement officer the listing.

1822.807 Exemptions.

Requests for exemption pursuant to FAR 22.807(a)(1), (a)(2), or (b)(5) shall be sent to the Headquarters Office of Procurement**,** Procurement Strategic Operations Division, who will coordinate through the Headquarters Contractor Industrial Relations Officer and the Agency head. If the exemption is granted, the Agency head shall notify the Office of Federal Contract Compliance Programs of such action within 30 days.

Subpart 1822.10—Service Contract Labor Standards

1822.1001 Definitions.

"Agency labor advisor" is the Headquarters Contractor Industrial Relations Officer**.**

1822.1008 Procedures for obtaining wage determinations.

1822.1008-1 Obtaining wage determinations.

(e) Contracting officers shall obtain the assistance of their Contracting Officer's Representative and Center Contractor IRO to ensure use of the DOL Wage and Hour Division's Service Contract Act Directory of Occupations and ensure incorporation of all service employee classes (Directory and non-Directory) planned to be utilized for a particular acquisition. When completing an e98, the contracting officer shall include and note any classifications and minimum hourly wage rates conformed under any predecessor contract. When a previously conformed classification is not included in the Directory, the contracting officer shall include the

job description on the e98. When the statement of work job title differs from the Directory job title, the contracting officer must provide a cross-reference on the e98.

1822.1008-2 Successorship with incumbent contractor collective bargaining agreement.

(b) The requirement for the successor contractor to pay the wages and fringe benefits is applicable until superseded by a new wage determination on the contract.

Subpart 1822.13—Equal Opportunity for Veterans

1822.1305 Waivers.

(c) Requests for waivers shall be submitted to the Associate Administrator for Diversity and Equal Opportunity Office.

1822.1308 Complaint procedures.
Contracting officers shall submit all complaints to the Associate Administrator for Diversity and Equal Opportunity Office.

Subpart 1822.14—Employment of Workers with Disabilities

1822.1403 Waivers.

(c) Requests for waivers shall be submitted to the Associate Administrator for Diversity and Equal Opportunity Office.

1822.1406 Complaint procedures.
Contracting officers shall submit all complaints to the Associate Administrator for Diversity and Equal Opportunity Office.

Subpart 1822.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

1822.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(e) All investigations under FAR Subpart 22.15 shall be referred to NASA's Office of Inspector General.

Subpart 1822.17—Combating Trafficking in Persons

1822.1704 Violations and Remedies.

(a) Contracting officers shall notify their Center Contractor Industrial Relations Officer upon taking any action for violations and remedies.

Subpart 1822.18—Employment Eligibility Verification

1822.1802 Policy.

(d) Contracting officers shall notify the Headquarters Office of Procurement, Procurement Operations Division, who will notify the Headquarters Contractor Industrial Relations Officer of any waivers granted for E-Verify.

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

(Revised October 18, 2016)

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

Subpart 1823.1—Sustainable Acquisition Policy

1823.103 Sustainable acquisitions.

(a) In order to meet sustainable acquisition goals, every NASA procurement must be screened for the applicability of the Federal environmental programs listed in this Part. This screening starts with the request originator, particularly for direct purchases of supplies. For service contracts and more complex acquisitions, this screening may be performed by the acquisition planning team. Request originators or the acquisition planning team, as appropriate, are also responsible for ensuring their procurement requirements comply with their center or facility's environmental management system as prescribed in NPR 8553.1, NASA Environmental Management System.

1823.103-70 Screening Procurement Requirements.

NASA Form (NF) 1707, Special Approvals and Affirmations for Requisitions, Section 3, requires request originators to review the Federal environmental programs and document if they apply to the procurement, if they will be met, or if a waiver is provided. As specified in NPR 8530.1, the center environmental organization is also available to provide support to both the contracting officer and request originator on the applicability of environmental programs. Using the NF 1707 as a guide, contracting officers shall screen procurement requirements to determine if any of the environmental programs apply, to place the appropriate FAR provisions and clauses in solicitations and contracts, and accurately record sustainable acquisition activity in the Federal Procurement Data System (FPDS).

1823.103-72 Sustainable Acquisition Reporting.

The Recovered Materials/Sustainability FPDS Data Element Choices must be thoughtfully and properly selected so that there is adequate data to gauge the progress and performance in the various environmental programs. The data in FPDS will be used to determine if NASA is meeting the sustainable acquisition goals. Centers are encouraged to use this data to measure their progress on a regular basis as part of their self-assessments, and to make any corrections necessary to improve performance. The FPDS data will be used for semiannual reports to the Office of Management and Budget (OMB) on NASA's sustainable acquisition performance.

Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

1823.202 Policy.

(a) NPR 8570.1, Energy Management Program, provides procedural requirements for evaluating and implementing cost-effective energy efficiency, renewable energy, and water conservation measures in NASA facilities and operations. Both these NASA requirements and

Federal environmental programs apply to the direct purchase of energy-or water-using products, e.g., appliances, computers, faucets, and to contracts where these products will be used by the contractor in performance of the contract, such facilities operations and maintenance (O&M) and construction contracts.

1823.204 Procurement exemptions.
The center or Component facility environmental manager is delegated authority to make the exemption determination at FAR 23.204.

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.

Subpart 1823.4—Use of Recovered Materials and Biobased Products

1823.404 Agency affirmative procurement programs.
NASA's affirmative procurement program is described in the NPR 8530.1, NASA Sustainable Acquisition.

1823.406 Solicitation provisions and contract clauses.

(b) When using FAR clause 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, insert the website at http://www.biopreferred.gov/BioPreferred/faces/pages/ContractorReporting.xhtml which is specifically designed to track Federal contractors' purchases of biobased products.

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.

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.

"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 preemployment 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.

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 products and commercial services.

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.

Subpart 1823.7—Contracting for Environmentally Preferable Products and Services

1823.703 Policy.
Responsibility, policy and procedures for NASA's implementation of FAR 23.703 are described in the following directives:

(i) NPR 1800.1, NASA Occupational Health Program Procedures

(ii) NPD 8500.1, NASA Environmental Management;
(iii) NPR 8510.1, NASA Cultural Resources Management;
(iv) NPR 8530.1, NASA Sustainable Acquisition;
(v) NPR 8553.1, NASA Environmental Management System;
(vi) NPR 8570.1, NASA Energy Management Program;
(vii) NPR 8580.1, Implementing the NASA National Environmental Policy Act;
(viii) NPR 8590.1, Environmental Compliance and Restoration Program; and
(ix) Executive Order 12114.

1823.704 Electronic products environmental assessment tool.

(c) Exceptions to FAR 23.704(a) may be granted by the NASA Chief Information Officer (CIO).

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 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 products and commercial services 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 at 1852.223-73 or the FAR clause at 52.236-13 with its Alternate I.

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.

1823.7102 Procedures.

NPD 2570.5, NASA Electromagnetic Spectrum Management, requires the submission of a request for spectrum certification to Center Spectrum Manager (SM) for all activities using the Electromagnetic Spectrum. The procurement request originator must submit the request for spectrum certification as early in the acquisition and procurement cycles as possible. NPR 2570.1, NASA Radio Frequency (RF) Spectrum Management Manual, sets forth the procedures for the management requirements for establishing and governing the use of radio frequencies. Contractors, providing or operating RF equipment for NASA use, shall obtain RF spectrum authorization from the Center/Facility Spectrum Manager in accordance the procedures set forth in the NPR from the installation's spectrum manager.

PART 1824
PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

(September 2015)

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PART 1824
PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

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

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

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

(ii) Records that—

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

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

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

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

1824.103 Procedures.

(b)(2) Ensure the contract work statement references the applicable sections of 14 CFR 1212, Privacy Act - NASA Regulations and NPR 1382.1, NASA Privacy Procedural Requirements.

Subpart 1824.2—Freedom of Information Act

1824.203 Policy.

(a) For NASA implementation of the Freedom of Information Act, see Availability of Agency Records to Members of the Public (14 CFR 1206).

(b) When the contracting officer receives a Freedom of Information Act (FOIA) request from the public, the contracting officer shall immediately refer the request to the cognizant FOIA Officer. A listing of NASA FOIA Officers and their contact information can be found here.

PART 1825
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PART 1825
FOREIGN ACQUISITION

See PCD 12-01A for further guidance.

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

See PCD 21-04B for further guidance related to FAR 25.103 and NFS 1825.103.

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.

(iii) The procurement officer shall send proposed public interest determinations to the Senior Procurement Executive for approval.

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.

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 1217.

1825.903 Exempted supplies.

(a) Through delegation from the Assistant Administrator for Procurement, procurement officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file CBP Form 7501, Entry Summary. All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

Subpart 1825.10—Additional Foreign Acquisition Regulations

1825.1001 Waiver of right to examination of records.

(b) The Administrator is the approval authority for waivers. The contracting officer must submit the waiver request, consisting of the determination and findings prescribed in FAR 25.1001(b) and any relevant supporting information, to the Headquarters Office of Procurement, Procurement Strategic Operations Division.

1825.1002 Use of foreign currency.

The NASA Headquarters Comptroller is the designated official for making the determination of the feasibility of using excess or near-excess currency.

Subpart 1825.11—Solicitation Provisions and Contract Clause

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.

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.

Subpart 1825.70—Foreign Contract and International Agreement Clearances

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for pre-award clearance of foreign contracts, and for coordination of international agreements that contemplate award of contracts using appropriated funds.

1825.7001 Definition.

"Foreign contract acquisition" as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of contracts with domestic concerns involving work to be performed outside the United States; or

(b) Contracts with the Canadian Commercial Corporation.

1825.7002 Foreign Contracts.

(a) *Policy.* Following the procedure in paragraph (b) of this section, the Acquisition Team must coordinate with Headquarters before initiating any foreign contract acquisition if the acquisition is valued above $100,000 or involves export control issues.

(b) *Procedure.*

(1) The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria in paragraph (a) of this section must complete the Request to Award A Foreign Contract template, and provide it through the contracting officer to the Headquarters Office of Procurement, Procurement Strategic Operations Division and Headquarters Office of International and Interagency Relations.

1825.7003 International Agreements.

Headquarters Office of Procurement, Procurement Strategic Operations Division concurrence is required for all Memoranda of Understanding with foreign entities and for other types of international agreements which contemplate the procurement of goods or services using U.S. appropriated funds. Headquarters Office of Procurement, Procurement Strategic Operations Division concurrence is not required for agreements that are done solely on a cooperative basis.

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(August 9, 2017)

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PART 1826
OTHER SOCIOECONOMIC PROGRAMS

Subpart 1826.3—Historically Black Colleges and Universities and Minority Institutions

1826.302 General Policy.

NASA's policy is to attain an Agency-wide goal of one percent of total contract value of prime and subcontracting awards for acquisitions to Historically Black Colleges and Universities (HBCU) and Minority Institutions (MI), pursuant to 51 U.S.C. 30304 (Pub. L. 111-314). This goal is calculated as the sum of prime HBCU/MI dollars as reported in FPDS-NG and subcontracted HBCU/MI dollars as reported in eSRS, divided by total small business eligible dollars as reported in FPDS-NG.

PART 1827
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PART 1827
PATENTS, DATA, AND COPYRIGHTS

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

"Reportable item" means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectable under Title 17 of the United States Code.

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

1827.302 Policy.

(a) *Introduction.* NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation of related property rights is based upon Section 20135 of the National Aeronautics and Space Act (51 U.S.C. 20135) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(b)(4) of Executive Order 12591. NASA contractors subject to Section 20135 of the Act shall ensure the prompt reporting of reportable items in order to protect the Government's interest and to provide the widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) *Contractor right to elect title.*

(1) For NASA contracts, the contractor right to elect title under the FAR only applies to contracts with small businesses and nonprofit organizations. For other business entities, see paragraph (2)(v) of this section.

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

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

(c) *Government license.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of title has been granted, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

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

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

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

(i) *Minimum rights to contractor.*

(1) For NASA contracts with other than a small business firm or a nonprofit organization, where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with the NASA Patent Waiver Regulations, 14 CFR 1245.108, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The procedures for revoking or modifying the license to a contractor that is other than a small business firm or a nonprofit organization are described in 14 CFR 1245.108.

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

1827.303 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the provision at 1852.227-84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization.

(b)(1) When the clause at FAR 52.227-11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227-11.

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

(iii) The contracting officer shall complete paragraph (j) of the clause at FAR 52.227-11 with the following: Communications and information submissions required by

this clause will be made to the individuals identified in the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative.

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

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

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

(d)(1) The contracting officer shall insert the clause at 1852.227-70, New Technology-Other than a Small Business Firm or Nonprofit Organization, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 21035(b) of the Act), if the contract is to be performed in the United States, and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not all inclusive):

(i) Conduct of basic or applied research.

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

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

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

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

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

(2) The contracting officer shall insert the provision at 1852.227-71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology-Other than a Small Business Firm or Nonprofit Organization (see paragraph (d)(1) of this section).

(3) The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227-11, Patent Rights—Ownership by the Contractor, or 1852.227-70, New Technology-Other than a Small Business Firm or Nonprofit Organization (see

paragraph (d)(1) of this section). It may also be inserted, upon consultation with the center patent or intellectual property counsel, in solicitations and contracts using another patent rights clause. The center New Technology and Patent Representatives are identified at http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html.

(e)(1) When work is to be performed outside the United States by contractors that are not domestic firms, the clause at 1852.227-85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the center patent or intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227-13, Patent Rights—Ownership by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304-3 regarding subcontracts with U.S. firms.)

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

1827.304 Procedures.

1827.304-1 General.

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

(c) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)(3)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

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

(f) *Revocation or modification of contractor's minimum rights*. For contracts with other than a small business firm or a nonprofit organization, revocation or modification of the contractor's license rights in subject inventions made and reported under the contract shall be in accordance with 14 CFR 1245.108 (see 1827.302(i)(2)).

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

(h) *Licenses and assignments under contracts with nonprofit organizations*. The Headquarters Agency Counsel for Intellectual Property (ACIP) is the approval authority for

assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227-72 and forwarded, with recommendation of the Patent Representative, to the ACIP for approval.

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

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

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

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

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

1827.304-3 Subcontracts.

(a) Unless otherwise authorized or directed by the contracting officer, contractors awarding subcontracts at any tier shall select and include in the subcontracts one of the clauses identified in subparagraphs (a)(1) or (a)(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.

(a) For each contract containing the clause at 52.227-11, Patent Rights—Ownership by the Contractor, or the clause at 1852.227-70, New Technology-Other than a Small Business Firm or Nonprofit Organization, the contracting officer shall take the following actions:

(1) Furnish, or require the contractor to furnish, directly to the New Technology Representative and the Patent Representative, a copy of each contract (and modifications thereto), and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the New Technology Representative or Patent Representative indicates otherwise.

(2) Notify the New Technology Representative as to which center organization has technical cognizance of the contract.

(b) The New Technology Representative shall take the following actions:

(1) In consultation with the Contracting Officer's Representative (COR), review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the reporting and recordkeeping requirements of the New Technology—Other than a Small Business Firm or Nonprofit Organization clause or the Patent Rights—Ownership by the Contractor clause.

(2) Forward to the Patent Representative copies of all contractor and subcontractor disclosures of reportable items and of subject inventions, interim new technology summary reports, final new technology summary reports, and utilization reports, as well as a copy of any written statement or correspondence with respect to such matters submitted therewith.

(3) Consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract.

(4) Forward to the Patent Representative all correspondence relating to invention waivers under the New Technology-Other than a Small Business Firm or Nonprofit Organization clause or election of title under the Patent Rights—Ownership by the Contractor clause.

(5) Upon receipt of the final new technology summary report required by the clause, and upon determination that the contract work is complete, consult with the COR to determine whether the contractor has complied with the clause's invention reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the clause at 1852.227-70, New Technology—Other than a Small Business Firm or Nonprofit Organization, and notify the contractor. As to any subject invention, the Patent Representative shall—

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and, if applicable, to permit the preparation, filing, and prosecution of patent applications;

(2) Determine inventorship;

(3) Ensure the preparation of instruments establishing the Government's rights; and

(4) Conduct selected reviews to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the clause at 1852.227-70, New Technology—Other than a Small Business Firm or Nonprofit Organization. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would constitute a final decision under the Disputes clause, involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-4 or 14 CFR 1245, subpart 1, or otherwise be outside the scope of the contract.

(e) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence.

1827.305-270 Reserved.

1827.305-271 New technology reporting plan.

In contracts with an estimated cost in excess of $2,500,000 (or less when appropriate) that contain the clause at 1852.227-70, New Technology—Other than a Small Business Firm or Nonprofit Organization, the contracting officer may require the contractor to submit, for post-award Government approval, a detailed plan for new technology reporting that demonstrates an adequate understanding of and commitment to the reporting requirements of the clause.

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 and forwarded to the contractor by the contracting officer.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

1827.404-2 Limited rights data and restricted computer software.

(c) *Protection of limited rights data specified for delivery.* The contracting officer shall consult with the center patent or intellectual property counsel regarding any questions concerning the delivery of limited rights data and/or the use of Alternate II that may arise from an offeror's response to the provision at FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(d) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the center patent or intellectual property counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise from an offeror's response to the provision at FAR 52.227-15 Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

1827.404-3 Data Rights in Basic and Applied Research.

(a)(3) Contracting Officers shall consult with the Center Patent or Intellectual Property counsel to determine the applicable rights in data clauses for basic or applied research contracts performed solely by a college or university to include determining whether the use of 52.227-14 Alternate IV in lieu of 52.227-14 paragraph (c)(1) is appropriate.

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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.

1827.404-5 Unauthorized, omitted, or incorrect markings.

(a) *Unauthorized marking of data.* The contracting officer shall consult with the center patent or intellectual property counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data—General.

(b) *Omitted or incorrect notices.* The contracting officer shall consult with the center patent or intellectual property counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data—General.

1827.405 Other data rights provisions

1827.405-3 Commercial computer software.
When contracting for commercial computer software, follow FAR part 12 procedures. (See FAR subparts 12.212 and 12.216.)

1827.405-4 Other existing data.

(c) See 1827.409(m) for use of the clause at 1852.227-88, Government-furnished computer software and related technical data.

1827.406 Acquisition of data

1827.406-1 General.
Requirements for delivering technical data relating to standard commercial products and commercial services, components, or processes should be kept to the absolute minimum consistent

with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

1827.408 Co-sponsored research and development activities.

The contracting officer shall consult with the center patent or intellectual property counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities.

1827.409 Solicitation provisions and contract clauses.

See PCD 21-02 for further guidance related to FAR 27.409(h).

(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)-(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), or under a separate agreement, 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—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

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

(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.

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PART 1828
BONDS AND INSURANCE
(September 2015)

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PART 1828
BONDS AND INSURANCE

Subpart 1828.1—Bonds

1828.106 Administration.

1828.106-6 Furnishing information.

(c) The contracting officer is the agency head's designee.

Subpart 1828.2—Sureties

1828.203 Acceptability of individual sureties.

(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Director, Acquisition Integrity Program within the Office of the General Counsel and the Office of Inspector General.

Subpart 1828.3—Insurance

1828.307 Insurance under cost-reimbursement contracts.

1828.307-1 Group insurance plans.

(a) The procurement officer is the approval authority.

1828.307-2 Liability.

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(b) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Senior Procurement Executive is the approval authority.

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.

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.

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.

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 contracts requiring performance on a government installation 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.

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(November 30, 2017)

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PART 1829
TAXES

Subpart 1829.1--General

1829.101 Resolving tax problems.

(a)(i) The Headquarters Office of the General Counsel is the designated legal counsel for all external contacts on FAR Part 29 tax problems, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

(ii) Contracting Officers shall forward tax problems that cannot be solved readily by reference to FAR Part 29 to the Headquarters Office of the General Counsel through the installation's Office of Chief Counsel. The Contracting Officer shall provide to the installation's Chief Counsel the following material, as applicable, which the Chief Counsel will be forwarded to the Headquarters Office of the General Counsel with a copy to the Headquarters Office of Procurement, Procurement Strategic Operations Division:

(A) A comprehensive statement of pertinent facts, including documents and correspondence.

(B) A copy of the contract.

(C) A thorough review of the legal issues involved and recommended action.

(D) If appropriate, a statement of the problem's effects on procurement policies and procedures, with recommendations.

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1830.7002-3 Representative investment calculations.
1830.7002-4 Determining imputed cost of money.

PART 1830
COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 1830.2—CAS Program Requirements

1830.201-5 Waiver.

(a)(2) The Senior Procurement Executive is the only individual authorized to approve CAS waivers. Requests for waivers that meet the conditions in FAR 30.201-5(b) must be submitted to the Headquarters Office of Procurement, Procurement and Grant Policy Division, at least 30 days before the anticipated contract award date.

(e) The Senior Procurement Executive will submit NASA's report to the CAS Board.

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

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Contract facilities capital estimates.

To estimate facilities capital cost of money (FCCOM), the contracting officer shall use DD Form 1861, Contract Facilities Capital Cost of Money, after evaluating the contractor's cost proposal, establishing cost of money factors, and developing a prenegotiation cost objective.

1830.7001-2 DD Form 1861 completion instructions.

(a) List overhead pools and direct-charging services centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective, and list them against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to compute the FCCOM estimated to be incurred each year. The sum of these products represents the estimated contract FCCOM for that year's effort.

(d) Add the yearly estimates to calculate the total contract FCCOM.

1830.7001-3 Preaward FCCOM applications.

Apply FCCOM in establishing cost and price objectives as follows:

(a) *Cost objective.* Use the FCCOM with normal, booked costs in establishing a cost objective or the target cost of an incentive type contract. Do not subsequently adjust these target costs when actual cost of money rates become available during the contract performance period.

(b) *Profit/fee objective.* Do not include FCCOM in the cost base when establishing a prenegotiation profit/fee objective. Use only normal, booked costs in this cost base.

1830.7001-4 Postaward FCCOM applications.

(a) *Interim billings based on costs incurred.*

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

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

(b) *Final settlements.*

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

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

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Definitions.

(a) *"Cost of money rate"* is either—

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

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

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

1830.7002-2 Cost of money calculations.

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

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

1830.7002-3 Representative investment calculations.

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

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

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

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

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

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

PART 1831
CONTRACT COST PRINCIPLES AND PROCEDURES

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PART 1831
CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205-6 Compensation for personal services.

1831.205-670 Reserved *[PN 23-09]*

1831.205-671 Solicitation provision.

See PCD 23-02 for guidance.

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 or pricing data as set forth in FAR 15.403-4.

1831.205-32 Precontract costs.

(1) Precontract costs are applicable only to—

(i) Sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts; or

(ii) Awards resulting from broad agency announcements.

(2) The procurement officer is the approval authority for the use of precontract costs. Authorization must be in writing and shall address the following:

(i) The necessity for the contractor to initiate work prior to contract award.

(ii) The start date of such contractor effort.

(iii) The total estimated time of the advanced effort.

(iv) The cost limitation.

(3) Authorization to incur precontract costs must be provided to the contractor in writing and shall include the following:

(i) The start date for incurrence of such costs.

(ii) The limitation on the total amount of precontract costs which may be incurred.

(iii) A statement that the costs are allowable only to the extent they would have been if incurred after formal contract award.

(iv) A statement that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

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.

1831.205-71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) *Scope.* This section implements the requirements of section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10).

(b) The costs of counterfeit electronic parts, suspect counterfeit electronic parts, and any corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1)(i) The covered contractor, as defined in section 1846.7001, has an operational 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

(ii) The covered contractor, including subcontractors, notifies the applicable NASA contracting officer in writing in accordance with 1846.7002(c); or

(2) 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.

[PN 20-08]

PART 1832
CONTRACT FINANCING

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PART 1832
CONTRACT FINANCING

1832.006-2 Definition.
The Director, Acquisition Integrity Program, is the Agency remedy coordination official.

1832.007 Contract financing payments.

(a)(1) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However, the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that—

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the Federal Register (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the Center Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

Subpart 1832.1—Financing For Other Than A Commercial Purchase

1832.111 Contract clauses for other than 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 Product and Commercial Service Purchase Financing

1832.202-1 Policy.

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

[PN 23-16]

1832.206 Solicitation provisions and contract clauses.

(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 Other Than Commercial Acquisitions

1832.402 General.

(e)(1) The Director of the Headquarters Office of Procurement, Procurement and Grant Policy Division, is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is $25,000,000 or less, and for all increases to such contracts over $25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement.

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the Center Deputy Chief Financial Officer.

[PN 23-16]

1832.406 Letters of credit.

(b)(1) Each Center is considered a contracting agency for the purposes of this requirement.

1832.407 Interest.

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.

1832.409-1 Recommendation for approval.

1832.409-170 NASA procedure for approval.
In addition to the items listed in FAR 32.409-1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

(a) Name of the cognizant NASA Headquarters program or staff office.
(b) Name and phone number of the contracting officer or negotiator.

(c) A copy of the proposed advance payments clause.

(d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see 1815.404-470).

(e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

1832.410 Findings, determination, and authorization.

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:
(i) In format subparagraph (a)(2), use the phrase "Advance payments (in an amount not to exceed $…..... at any time outstanding)" in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.
(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special financial institution account if no special financial institution account is required.
(iii) Use format subparagraph (a)(6), not (a)(7) or (a)(8).
(iv) At the end of format paragraph (b), use "is in the public interest."
(v) In format paragraph (c), use the phrase “(the amount at any time outstanding)" in all determinations and findings.

1832.412 Contract clause.

(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).

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.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-1 Customary progress payment rates.

(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.

1832.501-2 Unusual progress payments.

The Director of the Headquarters Office of Procurement, Procurement and Grant Policy Division is the approval authority for the use of unusual progress payments.

1832.502 Preaward matters.

1832.502-2 Contract finance office clearance.

The Senior Procurement Executive is the approval authority for the actions at FAR 32.502-2.

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.

1832.503 Postaward matters.

1832.503-5 Administration of progress payments.

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a uniform liquidation rate and under the jurisdiction of the same payment office.

1832.504 Subcontracts.

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) When determining if a contract or task order can be incrementally funded, contracting officers, in conjunction with budget, financial, and program office personnel, must consider whether the procurement is severable or non-severable, a bona-fide need exists, and the appropriation is available for use.

(b) When reviewing incremental funding estimates, contracting officers should ensure contractors understand that the amount in the limitation of funds clause covers potential termination liability costs.

[PN 20-01]

1832.702-71 Procedures.

a. For incrementally-funded contracts, the contracting officer shall—

(1) Ensure and obtain documentation (i.e. purchase request) for the contract file demonstrating that initial funds, sufficient to begin contract performance under the incrementally funded contract, are approved, committed and available for obligation prior to the initial contract award;

(2) Ensure that the contract funding modification is signed within one business day from the date the original contract was signed and obligated in the financial system of record within the same accounting period the contract and first modification are signed; and

(3) Ensure that the initial contract award and a properly executed contract funding modification are distributed to the contractor at the same time.

1832.704 Limitation of cost or funds.

1832.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.704-71 Provisional increase in the estimated cost.

(a) Contracting officers shall use the agency-wide Request for Provisional Increase in the Estimated Cost Template in situations where a contractor may be near or at the estimated cost for a contract or contract line item and there is an urgent and compelling need for the contractor to continue performance.

(b) The approval authority to issue any provisional increase in the estimated cost is the head of the contract activity.

[PN 24-14]

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.

Subpart 1832.8—Assignment of Claims

1832.803 Policies.

(d) The Senior Procurement Executive is the approval authority for no-setoff commitments.

[PN 20-03]

Subpart 1832.9—Prompt Payment

1832.905 Payment documentation and process.

(a) NASA's designated payment office is the NASA Shared Services Center (NSSC).

(b) Contracting officers or their designee shall review and approve all payment requests in NASA's Invoicing Routing and Information System (IRIS). All provisionally-approved interim vouchers are subject to a later audit of actual costs incurred.

(c) Review of interim cost vouchers and documenting, at a minimum, shall include the following:

(1) Verification of identifying data on the voucher (contract number, contractor name, address, and date of voucher).

(2) Verification of the arithmetic calculations on the voucher.

(3) Verification that the billed costs are within the contract's period of performance.

(4) Verification that the voucher complies with terms of the contract.

(5) Verification of billed indirect rates against approved provisional indirect rates for the billing period, or prior year's approved indirect rates, or established indirect rates in the base contract.

(6) Verification that Other Direct Costs are proper and acceptable.

To assist with interim cost voucher review, contracting officers may use the NASA Voucher Review Checklist (Cost-Type Contract) template.

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), (a)(1)(i)(B), and (a)(1)(ii).

1832.908-70 Submission of vouchers.

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

[PN 18-07]

Subpart 1832.10—Performance-Based Payments

1832.1001 Policy.

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (e.g., proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement, Procurement and Grant Policy Division to use performance-based payments in competitive negotiated solicitations under $50M. The request for approval must include an assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

1832.1004 Procedures.

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403-3). When using performance-based payments in competitive negotiated acquisitions under $50 million, contracting officers should consider the use of alternative evaluation methods, e.g., qualitative evaluation under Mission Suitability or another appropriate factor.

1832.1005 Contract clauses.

(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.

(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under $50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

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.

(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.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.

PART 1833
PROTESTS, DISPUTES, AND APPEALS

(Revised January 4, 2016)

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PART 1833
PROTESTS, DISPUTES, AND APPEALS

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 Assistant 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.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)).

(1) The Senior Procurement Executive is the approval authority for contract award. Requests shall be processed through the cognizant Procurement Strategic Operations Division Procurement Analyst.

(3) The Senior Procurement Executive is the approval authority for authorizing continued contract performance. Requests shall be processed through the cognizant Procurement Strategic Operations Division Procurement Analyst.

1833.104 Protests to GAO.

The Senior Procurement Executive has the sole authority to decide whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with the GAO other than in accordance with this part and other guidance provided by NASA Headquarters (HQ).

(a)(2) The cognizant HQ Office of Procurement, Procurement Strategic Operations Division Procurement Analyst shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral

contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to the cognizant HQ Procurement Strategic Operations Division Procurement Analyst, the HQ Office of the General Counsel (OGC), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to OGC within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except (*a*) and (*b*) are not required if already accomplished:

(*a*) Send a copy of the protest file index to OGC within 10 days of receipt of the request.

(*b*) Send a copy of the protest file to OGC within 15 days of receipt of the request.

(*c*) With OGC's concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iii) OGC shall submit the protest file to GAO.

(4)(i) OGC shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) As part of the process to obtain approval for contract award from the head of the contracting activity (HCA), coordination with the Senior Procurement Executive and HQ OGC is required.

(c)(1) The contracting officer shall consult the cognizant Procurement Strategic Operations Division Procurement Analyst before terminating a protested contract.

(2) As part of the process to obtain approval for continued contract performance from the HCA, coordination with the Senior Procurement Executive and HQ OGC is required.

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to OGC within 6 days of issuance of the GAO decision.

1833.106 Solicitation provision and contract clause.

(a) The contracting officer is the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233-2.

1833.106-70 Solicitation provision.

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

Subpart 1833.2--Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Headquarters Offices of Inspector General and OGC, Acquisition Integrity Program.

1833.210 Contracting officer's authority.

See NASA Policy Directive 2010.2 on use of Alternative Dispute Resolution.

1833.211 Contracting officer's decision.

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing appeals of contracting officer's final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208), and include a notification that the Board's operating procedures appear in Part 48, Code of Federal Regulations, Chapter 2, Appendix A.

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.

PART 1834
MAJOR SYSTEM ACQUISITION
(*September 2015*)

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PART 1834
MAJOR SYSTEM ACQUISITION

1834.003 Responsibilities.

(a) NASA's implementation of OMB Circular No. A-109, Major Systems Acquisition, and FAR Part 34 is contained in this Part and in NASA Policy Directive (NPD) 7120.4 "NASA Engineering and Program/Project Management Policy" and NASA Procedural Requirement (NPR) 7120.5 "NASA Space Flight Program and Project Management Requirements".

Subpart 1834.2—Earned Value Management System

See PIC 23-02 for further guidance.

1834.201 Policy.

See PCD 15-05 for further guidance.

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

1834.202 Integrated baseline reviews.

(d) Use of pre-award IBRs is limited to the second or subsequent phases of a phased acquisition (see 1817.70). When a pre-award IBR is contemplated, the contracting officer shall include the instructions with respect to the schedule and conduct of the IBR in the proposal request.

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.

See PCD 15-05 for further guidance.

1834.203-70 NASA solicitation provision and contract clause.

See PCD 15-05 for further guidance.

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.

PART 1835
RESEARCH AND DEVELOPMENT CONTRACTING

(Revised July 25, 2016)

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PART 1835
RESEARCH AND DEVELOPMENT CONTRACTING

1835.010 Scientific and technical reports.

(a)(i) *Final Reports.* Final reports must be furnished by contractors for all R&D contracts. The final report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract. The final report should comply with 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. When reports are submitted electronically, the contracting officer should also request the submission of a paper copy of the report that could be used to validate items such as math and symbols that can be transposed due to font substitution or other electronic transmission problems. Information regarding appropriate electronic formats for final reports is available from center STI/Publications Managers or the NASA Center for AeroSpace Information (CASI) under "Publish STI – Electronic File Formats."

(ii) In addition to the final report submitted to the contracting officer, the contractor shall concurrently provide CASI and the center STI/Publications Manager with a copy of the letter transmitting the final report to the contracting officer.

(iii) It is NASA policy to provide the widest practicable and appropriate dissemination of scientific and technical information (STI) derived from NASA activities, including that generated under NASA research and development contracts. One mechanism for disseminating NASA STI is through CASI. Before approving a final report delivered under a contract for inclusion in the CASI repository, NASA must complete a document availability authorization (DAA) review. The DAA review is intended to ensure that NASA disseminates NASA STI in a manner consistent with U.S. laws and regulations, federal information policy and publication standards, intellectual property rights, technology transfer protection requirements, and budgetary and technological limitations. NASA Form 1676, NASA Scientific and Technical Document Availability Authorization (DAA), or a center-specific version of this form, is used to complete this review. The DAA review process applies to the publication and dissemination of NASA STI by NASA or under the direction of NASA. The final report, as delivered under the contract, must not be released outside of NASA until NASA's DAA review has been completed and the availability of the document has been determined by NASA.

(iv) *Additional reports of work.* In addition to the final report required by paragraph (a)(i) of this section, the contracting officer, in consultation with the program or project manager, should consider the desirability of requiring periodic reports and reports on the completion of significant units or phases of work for monitoring contract performance. Any additional reports must be included in the clause at 1852.235-74 as a contract deliverable. (See FAR 27.403.)

(v) Upon receipt of the final report, or any additional reports required by 1852.235-74 if included in the contract, the contracting officer shall forward the reports to the

contracting officer's representative (COR) for review and acceptance. The COR shall ensure that the DAA review is initiated upon acceptance of the final report or any additional reports that NASA elects to publish or release outside of NASA or present at internal meetings at which foreign nationals may be present. Upon completion of the DAA review, the COR shall ensure that the DAA-approved STI and the original approved DAA form are sent to the center STI/Publication Manager. The contractor should be advised of the final availability determination. These responsibilities should be included in the COR Delegation, NASA Form 1634.

(b) The final report shall include a completed Report Documentation Page, Standard Form (SF) 298, as the final page of the report.

1835.011 Data.

(a) In addition to any reports required by 1835.010, the contracting officer shall specify what additional data, (type, quantity, and quality) is required under the contract, for example, presentations, journal articles, and seminar notes. (See FAR 27.403.)

1835.015 Contracts for research with educational institutions and nonprofit organizations.

(a)(1)(iv) The research contract shall include a requirement that the contractor obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator or project leader.

1835.016 Broad agency announcements.

(a)(i) The following forms of broad agency announcements (BAAs) are authorized for use:

(A) Announcements of Opportunity (see 1872).

(B) NASA Research Announcements (see 1835.016-71).

(C) Other forms of announcements approved by the Senior Procurement Executive.

(ii) Other program announcements, notices, and letters not authorized by paragraph (a)(i) of this section shall not be used to solicit proposals that may result in contracts.

(iii) Draft or final versions of any form of BAA that directly or substantially supports a program subject to NASA Procedures and Guidelines (NPR) 7120.5 shall not be released unless—

(A) All applicable NPR 7120.5 required documentation (see 1804.7301(b)(2)) is current and has been approved (e.g., Formulation Authorization Document, Program Commitment Agreement, Program Plan, or Project Plan); or

(B) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

(a)(iv) Announcements authorized by paragraph (a)(i)(C) of this section with a total estimated dollar value of $500M or greater, or otherwise designated by the Senior Procurement Executive, shall be supported by a Procurement Strategy Meeting and Executive Summary presentation approved by Headquarters, unless otherwise delegated.

(c)(i) BAAs may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304.

(ii) Upon issuance of a solicitation, contracting officers shall follow the blackout notice procedures at 1815.201.

[PN 22-14]

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.

(b) *Procedure*. When a foreign proposal or a U.S. proposal with foreign participation is received in response to a BAA, the NASA sponsoring office shall determine whether the proposal conforms to the no-exchange-of-funds policy in 1835.016-70(a).

(1) If the proposal conforms to the policy in 1835.016-70(a), the NASA sponsoring office shall evaluate the proposal and make selection in accordance with 1835.016-71(d). In conjunction with the notification of successful foreign proposers, the NASA sponsoring office shall notify the Headquarters Office of External Relations, Code I. Code I will negotiate the agreement with the sponsoring foreign agency or funding institution for the proposed participation.

(2) If the proposal does not conform to the policy in 1835.016-70(a), the NASA sponsoring office shall—

(i) Determine whether the proposal merits further consideration;

(ii) If further consideration is warranted, refer the proposal to Code I; and

(iii) Complete the evaluation of the proposal. However no notification of selection, whether tentative or final, shall be made without Code I approval.

(3) Notification to Code I required by paragraphs (b)(1) and (b)(2)(ii) of this section, shall address the items contained in 1872.504(c), and shall be coordinated through the Office of Procurement.

1835.016-71 NASA Research Announcements.

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

(b) *Issuance.*

(1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel and Procurement. In addition, the issuing office shall obtain input from the cognizant offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Input shall also be obtained from the appropriate systems safety organization for NRA's that may involve potentially hazardous operations such as those related to flight and/or mission critical ground systems. The NRA approval authority shall designate the selection official.

(2) The selection official shall assure that the NRA is synopsized prior to issuance in accordance with FAR 5.201. The synopsis shall be brief, and the technical section describing the area of interest should not exceed 50 words.

(3) If a Headquarters-generated NRA may result in awards by a NASA field installation, the issuing office shall notify the installation procurement officer and provide a copy of the NRA.

(4) The selecting official is responsible for the preparation and distribution of the NRA.

(5) NRAs normally shall remain open for at least 90 days.

(c) *Content and Format.* All NRAs shall conform to NPR 5810.1, "Standard Format for NASA Research Announcements (NRAs) and other Announcements for Grants and Cooperative Agreements".

(d) *Receipt of proposals, evaluation, and selection.*

(1) Proposals shall be protected as provided in FAR 15.608, FAR 15.609, and 1815.609-70.

(2) Late proposals and modifications shall be treated in accordance with 1815.208.

(3) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve evaluation by an in-house specialist, a specialist outside NASA, or both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in 1815.207. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror only for the purpose of clarification (as defined in FAR 15.306), or to understand the meaning of some aspect of the proposal that is not clear, or to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(4) Competitive range determinations shall not be made, and final proposal revisions shall not be requested.

(5) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, the selecting official may request revisions from the offeror or request the contracting officer to implement them during negotiations with the successful offeror(s). The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.306(e). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(6) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers. The selection statement shall contain the following:

(i) A brief description of the solicitation, including a statement of program objectives, the evaluation and review processes that were followed, and a summary of the results of the evaluation and review of proposals.

(ii) A listing of all selected proposals including proposal number, proposing principal investigator, proposing institution, and title (indicate partial selections when known).

(iii) A brief rationale for the selection based upon the expert evaluation of proposals by a peer panel in accordance with the evaluation criteria defined in the NRA, and incorporating programmatic factors.

(iv) A brief description of the post-panel decision making process used to arrive at the selection. In particular, the selection of proposals identified by the peer review as having a lower evaluation result than those not selected must be explained.

(7) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under FAR 15.5, with the participation of a contracting officer.

(8) The selecting official shall forward to the contracting officer the following information:

(i) A copy of the NRA (This requirement may be waived in the case of a grant award at the discretion of the grant officer).

(ii) The results of the technical evaluation, including the total number of proposals received, the selection statement, and the listing of proposal(s) selected for funding.

These requirements may be waived in the case of a grant award at the discretion of the grant officer if the purchase request specifically references the NRA number and states that the proposal forwarded for funding was selected under the NRA.

(iii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding.

(iv) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA.

(v) A procurement request.

(vi) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewers' comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs.

(vii) A copy of the selected proposal as originally submitted, any revisions, and any correspondence from the successful offeror.

(9) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted.

(10) The selecting official shall provide each offeror whose proposal was selected for negotiation a notification stating—

(i) The proposal has been selected for negotiation;

(ii) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(iii) Any costs incurred by the offeror in anticipation of an award are at the offeror's risk.

(e) *Award.* The contracting officer shall choose the appropriate award instrument. If a contract is selected, the contracting officer shall—

(1) Advise the offeror that the Government contemplates entering into negotiations, type of contract contemplated, estimated award date, anticipated effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms. If FAR 52.219-9, Small Business Subcontracting Plan, is required for the resultant contract, request the offeror to provide a subcontracting plan;

(4) Conduct negotiations in accordance with FAR Subparts 15.3 and 15.4, as applicable;

(5) Award a contract; and

(6) Comply with FAR Subparts 4.6 and 5.3 on contract reporting and synopses of contract awards.

(f) *Cancellation of an NRA.* When program changes, program funding, or any other reasons require cancellation of an NRA, the office issuing the NRA shall notify potential offerors by using the mailing list for the NRA.

1835.016-72 Foreign participation in NRA proposals.

Foreign proposals or U.S. proposals with foreign participation shall be treated in accordance with 1835.016-70. Additional guidelines applicable to foreign proposers are contained in the provision at 1852.235-72, Instructions for Responding to NASA Research Announcements.

1835.070 NASA contract clauses and solicitation provision.

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

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

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

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

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

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

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

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

1835.071 NASA Research and Development (R&D) Contract Reporting.

The E-Government Act of 2002 (Public Law No. 107-347) mandated the development and maintenance of a repository that integrates information on R&D funded by the federal government. In support of that requirement, contracting officers shall insert in the description field in FPDS, or in NCWS as applicable, a brief but informative description of the statement of work, not to exceed 250 characters, for each contract award and new work award that is funded predominantly with R&D funds.

PART 1836
CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

(September 2015)

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PART 1836
CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.

(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.

1836.209 Construction contracts with architect-engineer firms.

(a) Except as indicated in paragraph (b) of this section, the Senior Procurement Executive is the approval authority.

(b) A construction contract may be awarded to the firm that designed the project (or its subsidiaries or affiliates) if the contract is awarded on the basis of performance specifications for the construction of a facility, and it requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(c) In no case shall the firm that prepared the drawings and specifications supervise and inspect, on behalf of the Government, the construction of the facility involved.

1836.213 Special procedures for sealed bidding in construction contracting.

1836.213-3 Invitations for bids.

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.

1836.213-4 Notice of Award.

(e) Contract delivery or performance schedules, commencement of work, or notices to proceed shall not be expressed in terms of a notice of award. (See 1814.408-1.)

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).

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.

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

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

(a)(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 and firms that have not had prior NASA contracts.

1836.602-2 Evaluation boards.

(a) Installations shall establish an architect-engineer selection board to be composed of the selection authority and at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an official from the requiring office; if appropriate, a technical official familiar with any unique subject matter critical to the requirement; and a procurement official (a contracting officer, if feasible) as an ad-hoc advisor to the board. Where appropriate, the procurement official may serve as a voting member. Non-Government employees shall not be appointed as voting members.

1836.602-4 Selection authority.

(a) The selection authority shall be appointed in accordance with installation procedures.

1836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The procedures at FAR 36.602-5(a) or (b) may be used at the discretion of the selection authority.

1836.602-70 Selection of architect-engineer for master planning.

(a) Definition of master plan. A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) Selection.

(1) Selection of an architect-engineer shall be made by the Official, appointed by the Center Director. The report of the architect-engineer selection board will be concurred in at NASA Headquarters by the Assistant Administrator for Strategic Infrastructure, the Senior Procurement Executive, the Chief Financial Officer, and the General Counsel.

(2) The Official, appointed by the Center Director, shall be responsible for the architect-engineer selection board report required by FAR 36.602-3(d).

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602-2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.605 Government cost estimate for architect-engineer work.

(b) The contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

Subpart 1836.70—Partnering

1836.7001 Definition.

"Partnering" means 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.

1836.7002 General.

(a) The establishment of a partnering environment usually leads to higher quality products completed more quickly at lower overall costs and with fewer accidents and litigation.

(b) The use of partnering is encouraged as it has been shown to reduce the average contract cost and schedule growth and to reduce contract claims and litigation.

(c) Partnering is a voluntary contract relationship within the management process that is not to be used to unofficially alter terms of the contract.

1836.7003 Policy.

(a) Partnering should be used on a contract when the contracting officer, in coordination with the project manager, determines that the benefits to be achieved from its use are expected to be greater than the costs see NASA Partnering Desk Reference.

(b) In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:

(1) The estimated dollar value of the contract.
(2) The complexity of the work to be performed.
(3) The contemplated length of the contract.
(4) The estimated costs to be incurred in conducting the partnership development and team building initial and follow-up workshops.

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.

PART 1837
SERVICE CONTRACTING
(Revised February 4, 2016)

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PART 1837
SERVICE CONTRACTING

Subpart 1837.1—Service Contracts–General

1837.101 Definitions.

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

1837.104 Personal services contracts.

(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.

1837.106-70 Funding and term of service contracts–Additional considerations.

(a) For all severable service contracts, the base period of performance shall not extend beyond the date of the availability of the funds initially obligated to the contract at the time of award. The Bona Fide Needs Rule, codified at 31 U.S.C 1502, provides that the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. The period of performance of any option on severable service contracts also shall not extend beyond the period of availability of funds. Contracts including such options shall contain the appropriate “Availability of Funds” clause.

(b) Decisions regarding the severability of the work and compliance with the Bona Fide Needs Rule should be made as early as possible in the acquisition planning process. Contracting officers, in collaboration with the requirements initiator and supporting Center Financial and Legal personnel, should ensure, in accordance with FAR 7.105 and NFS 1807.105, that the funding and term of severable service contracts are considered and discussed in acquisition planning documentation, including the severability of the work and compliance with the Bona Fide Needs Rule. For additional information on acquisition funding to include the Bona Fide Need rule click here.

1837.109-70 Protective services contracts.
See Appendix A, A-102.3 for policy related to the acquisition of protective services.

[PN 18-09, PN 19-12]

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).

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

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: (1) to impair the Government's ability to obtain this type of information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

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

(3) As used in this subpart, *"service provider"* refers to the service contractor that receives sensitive information from NASA to provide services to the requiring organization.

(b)(1) To support management activities and administrative functions, NASA relies on numerous service providers. These contractors may require access to sensitive information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure.

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

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

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

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

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

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

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 respond 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.

1837.204 Guidelines for determining availability of personnel.

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the

legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Senior Procurement Executive is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

Subpart 1837.6—Performance-Based Acquisition

1837.601 General.

(a) A statement of objectives (SOO) may be used on both competitive and non-competitive acquisitions. Use of a SOO on a competitive acquisition must be approved by the procurement officer and supported by a description of how the source selection process will be structured to accommodate evaluation of offeror-unique performance work statements submitted in response to the SOO.

1837.604 Quality assurance surveillance plans.

A Quality Assurance Surveillance Plan (QASP) must be developed for each contract for services, and also for supplies where higher-level contract quality requirements are required. Those plans must be consistent with and may be included within the over-arching project QASP (PQASP) described in NPR 8735.2, Management of Government Quality Assurance Functions for NASA Contracts.

Part 1838—Reserved

NO NFS TEXT

PART 1839
ACQUISITION OF INFORMATION TECHNOLOGY
(September 2015)

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SUBPART 1839.2 ELECTRONIC AND INFORMATION TECHNOLOGY
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PART 1839
ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1839.1—General.

1839.105 Privacy.
See 1804.470.

1839.107 Contract clause.

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.

Subpart 1839.2—Electronic and Information Technology.

See PIC 24-03A

1839.203 Applicability

1839.203-70 Documentation.

(a)(1) For all procurements of Electronic and Information Technology (EIT), the requirements office is responsible for market research as well as preparing, documenting, and obtaining approval for all determinations of compliance, non-compliance, and partial compliance; commercial nonavailability determinations; and undue burden exceptions. Center procurement offices should provide appropriate assistance to the requirements office. For micro-purchases made under FAR 13.2, market research documentation for EIT may be entered within the purchase card system or within supporting files. For other than micro-purchases made under FAR 13.2, the market research shall be provided to the center procurement office for inclusion in the contract file and should be substantially the same as the following format:

Compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR 1194)

Purchase Request:
Contract:
Delivery Order:
Task Order:

The supply and/or service required:

___ Meet the applicable accessibility standards.

___ Is a commercial supply or service and market research has determined that some or all of the applicable Access Board standards cannot be met by supplies or services available in the commercial marketplace in time to satisfy agency delivery requirements. (See attached EIT Commercial Non-Availability Determination)

___ Is exempt from compliance with applicable accessibility standards based on the following exception:

___ The item is for a national security system.

___ The item will be located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment.

___ Would impose an undue burden on the agency. (See attached Undue Burden Determination)

(Signature)_____
Printed Name of Requiring Official (Date)

Part 1840—Reserved

NO NFS TEXT

PART 1841
ACQUISITION OF UTILITY SERVICES
(September 2015)

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PART 1841
ACQUISITION OF UTILITY SERVICES

Subpart 1841.1—General

1841.103 Statutory and delegated authority.

(c) The authority to request delegations of contracting authority from GSA is delegated to the center procurement officer. The procurement officer shall coordinate with the Headquarters Facilities Engineering Division before requesting this delegation of authority.

Subpart 1841.2—Acquiring Utility Services

1841.201 Policy.

(c) The Center or Component Facility Energy Manager shall review each acquisition of utility services for opportunities to increase the portion of energy generated from renewable sources or conventional sources with lower greenhouse gas emissions in order to assist NASA in reaching goals and in compliance with Federal energy and greenhouse gas requirements addressed in NPR 8570.1, Energy Efficiency and Water Conservation.

1841.205 Separate contracts.

(a) Before entering into a separate contract, the contracting officer shall coordinate with the Center Energy Manager and Headquarters Facilities Engineering Division.

1841.205-70 Acquisition of energy when purchased as a commodity.

(a) The acquisition of energy, such as electricity and natural gas, when purchased as a commodity is considered the acquisition of supplies rather than the acquisition of utility services described in FAR Part 41. Therefore, the contracting officer may acquire energy commodities directly under applicable authorities and FAR procedures governing the acquisition of supplies NASA Centers and Component Facilities may also participate in energy commodity procurement programs conducted by other entities, such as the GSA and the Defense Logistics Agency. The contracting officer shall coordinate energy commodity acquisitions with the Headquarters Facilities Engineering Division.

1841.206 Interagency agreements.

A NASA Center or Component Facility located with a Department of Defense (DoD) installation may, after coordinating with the Headquarters Facilities Engineering Division, enter into an interagency agreement to reimburse the installation for utility services provided by the installation under DoD's utility services authority.

PART 1842
CONTRACT ADMINISTRATION AND AUDIT SERVICES

(Revised June 30, 2017)

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PART 1842
CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1842.1—Contract Audit Services

1842.101 Contract audit responsibilities.

(b)(1) The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts with vendors for which DOD acts as the Cognizant Federal Agency Official (CFAO), except those contracts awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. A-133; those with the Canadian Commercial Corporation; and those contracts with vendors for which NASA serves as the CFAO. DCAA may not self-initiate contract required audits (i.e., incurred cost audits, contractor business reviews) on NASA's behalf without obtaining an audit request. For those contracts where DCAA has not received a Letter of Audit Delegation (NASA Form 1433), DCAA will provide a notice to HQ-DL-OP-NASA-Price-Analysts@MAIL.NASA.GOV asking if NASA wants a specific contract(s) audited.

(2) Cross-servicing arrangements are the responsibility of the Headquarters Office of the Chief Financial Officer. Contracting officers should direct questions to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

1842.102 Assignment of contract audit services.

1842.102-70 Review of administration and audit services.

NASA contracting activities shall assess their delegations to DOD semiannually to determine changes in delegation patterns that could result in significant changes in DOD manpower requirements or have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizable new acquisitions should be considered in the assessment. Contracting activities shall advise the Headquarters Office of Procurement, Procurement and Grant Policy Division when an assessment indicates a significant change in required DOD support. DCAA will provide the Headquarters Office of Procurement, Procurement and Grant Policy Division with a contract required audit plan annually. DCAA will distribute a copy of all completed contract required audits that include NASA to HQ-DL-OP-NASA-Price-Analysts@MAIL.NASA.GOV.

1842.102-71 Assignment of NASA personnel at contractor plants.

(a)(1) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval with the concurrence of the Senior Procurement Executive. The following supporting information shall be forwarded with the request to make the assignment:

(i) A statement of the special circumstances that necessitate the assignment.

(ii) The contract administration services to be performed.

(iii) A summary of any discussions held with the cognizant contract administration organization.

(iv) A staffing plan covering three years or such shorter period as may be appropriate.

(2) The provisions of this paragraph do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel.

(c) When a NASA resident office, including any assigned technical personnel, and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel will be involved in any aspect of contract administration.

1842.102-72 Assignment of Contract Audit Services for Canadian Firms.

(a) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(b) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

Subpart 1842.2—Contract Administration Services

1842.202 Assignment of contract administration.

(b) *Special instructions*. The functions described in 42.302(b)(1) and the following subparagraphs of 42.302(a) are normally retained: (3), (10), (12), (13), (14), (15), (17), (18), (19), (20), (21), (22), (23), (24), (29), (31), (32), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (51), (56), (58), (59), (62), (63), (64), (65), (69), and (70). In addition to the instructions at FAR 42.202(a)(1) through (4), contracting officers shall—

(i) Send delegations to the DCMA NASA Support Desk operated by DCMA NASA Product Operations (NPO) at: dcma.san-antonio-tx.npo.mbx.nasa-support-desk@mail.mil, for receipt, coordination, and acceptance by DCMA and re-delegation for performance by the appropriate DCMA Contract Management Office(s); except for research and development with universities; management and professional support services; base, post, camp and station purchases; operation or maintenance of, or installation of equipment at, radar or communication network sites; and operation and maintenance of, or installation of equipment at Center test ranges, facilities, and installations;

(ii) Include in delegation requests the NASA Form 1430, Letter of Contract Administration Delegation, General, along with appropriate appendices (NASA Form 1430A, 1430B, 1430C, 1430D), NASA Form 1431, Letter of Acceptance of Contract Administration, and contract documents (base contract and SOW/PWS). Use the following address on NASA Form (NF) 1430 for block 3 and on NF 1431 block 4: DCMA NASA Product Operations, 2720 Howitzer Rd, Bldg. 2372, Fort Sam Houston, TX 78234-6002;

(iii) Contracting officers shall use the returned NASA Form 1431, Letter of Acceptance of Contract Administration, as contract file documentation that the delegation has been accepted, modified or rejected by DCMA and as a reference for points of contact for each of the functional areas delegated.

[PN 23-10]

1842.202-70 Retention of contract administration.

(a) The assignment of contract administration is optional for the following contracts:

(1) Research and development study contracts not involving deliverable hardware or Government furnished property.

(2) Contracts with periods of performance of 90 days or less.

(3) Contracts with periods of performance of 91 to 180 days that do not include all of the following:

(i) A small business subcontracting plan.

(ii) Government-furnished property.

(iii) Progress payments, if a fixed-price type contract.

(4) Purchase orders without Government source inspection requirements.

(5) Contracts requiring only on-site performance.

(6) Contracts requiring work in the vicinity of the awarding center where DOD contract administration services are not reasonably available.

(b) The determination to assign Quality Assurance, Property Administration or Plant Clearance for administration shall be made after review by the cognizant technical personnel.

Subpart 1842.3--Contract Administration Office Functions

1842.302 Contract administration functions.

In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria and conformity with ANSI/EIA Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMA.

Subpart 1842.5—Postaward Orientation

1842.503 Postaward conferences.

(1) A postaward conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $10,000,000;

(ii) Contract performance is required at or near a NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation; or

(iv) Complex contract management problems are expected, particularly risk management areas identified during program and acquisition planning, e.g., significant or unusual mission success, technical, cost, schedule, safety, security, occupational health, environmental protection, and export control risks.

(2) Procurement officer approval is required to waive a post-award conference for contracts meeting any of the criteria in paragraph (1) of this section. The request for procurement officer approval to waive a post-award conference shall address action taken and planned to ensure effective communication with the contract administration office during the performance of the contract.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

1842.705-1 Contracting officer determination procedure.

See PCD 20-05 for further guidance related to FAR 42.705.
See PCD 13-02 for further guidance related to FAR 42.705.

(b) *Procedures.*

(3)(i) When NASA is not the cognizant Federal agency, NASA should participate with the cognizant contracting officer (or cognizant Federal agency official) in the final indirect cost rate determination procedure where the issues involved would have a significant financial impact on the agency. The NASA participant should be a representative from that installation providing the preponderance of NASA funding. If a determination is made that NASA's participation is not warranted, that decision must be communicated to the cognizant contracting officer (or cognizant Federal agency official).

(ii) When NASA is the cognizant Federal agency, settlement of indirect costs should be conducted by the cognizant NASA contracting officer (normally from the installation providing the preponderance of NASA funding).

1842.707 Cost-sharing rates and limitations on indirect rates.

(a) The AA for Procurement is the approval authority for use of an indirect rate ceiling provision in a solicitation or contract. Requests for approval shall be submitted through the Headquarters Office of Procurement, Procurement Strategic Operations Division. Such requests shall be constructed in the form of a Determination & Finding (D&F) which shall, at a minimum, contain a copy of the proposed indirect rate ceiling provision, a justification as to why such a provision is necessary, and the associated benefits to the Government. The Headquarters Office of Procurement, Procurement Strategic Operations Division Procurement Analyst shall coordinate all indirect rate ceiling approval requests with the Headquarters Office of the General Counsel, the Cognizant Administrative Contracting Officer, and the cognizant Headquarters Office of Procurement, Procurement and Grant Policy Division Procurement Analyst.

(b)(1) Indirect rate ceilings should only be used in those situations described in FAR 42.707(b)(1)(i) and (ii). On competitive procurements, if the situation cited in FAR 42.707(b)(1)(iii) arises during the cost realism evaluation, use of an indirect rate ceiling provision should be proposed as part of the source selection presentation and the above approval procedures initiated at that time.

(c) All indirect rate ceiling provisions must address, at a minimum, the indirect rates being capped; the procedures for possible adjustment of ceiling rates if certain circumstances warrant such adjustment; and the elements identified in FAR 42.707(c).

1842.708 Quick-closeout procedure.

(a)(2)(ii) The 10 percent parameter does not apply to NASA contracts.

1842.708-70 NASA Quick-closeout procedures.

After a decision is made that the use of quick closeout is appropriate, the contracting officer shall—

(a) Obtain a written agreement from the contractor to participate in the quick-closeout process under FAR 42.708 for the selected contract(s);

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) Notify the cognizant audit activity in writing, identify the contract(s), and request that—

(1) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(2) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(e) Establish final indirect cost rates using one of the following rates:

(1) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(2) through (6) of this section.

(2) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(3) through (6) of this section.

(3) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.

(4) The contractor's negotiated billing rates, if less than paragraphs (e)(5) or (6) of this section.

(5) The previous year's final rates.

(6) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established.

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

(g) For those contracts where the indirect cost rate negotiation function was delegated or falls under the cognizance of another agency, send a copy of the agreement to that office.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1203 Processing agreements.

(b) The installation shall immediately notify the Headquarters Office of Procurement, Procurement Strategic Operations Division of the request to execute a novation (successor-in-interest) or change-of-name agreement.

(h) The contracting officer shall forward one copy of the agreement to the Headquarters Office of Procurement, Procurement Strategic Operations Division.

1842.1203-70 DOD processing of novation and change-of-name agreements on behalf of NASA.

(a) Copies of novation and change-of-name agreements executed by DOD on behalf of NASA are maintained by the Headquarters Office of Procurement, Procurement Strategic Operations Division.

(b) Headquarters Office of Procurement, Procurement Strategic Operations Division is the Agency point of contact for issues related to proposed novation agreements. With the concurrence of the Headquarters Office of Procurement, Procurement Strategic Operations Division, an installation may execute a separate agreement with the contractor.

Subpart 1842.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1842.1305 Contract clauses.

(b) FAR 52.242-15, Stop-Work Order, shall not be used in solicitations or contracts for research performed by educational or other nonprofit institutions.

Subpart 1842.15—Contractor Performance Information

1842.1502 Policy.

(a) Not later than 120 days after the end of the period of performance on contracts having a period of performance exceeding one year, contracting officers must conduct interim evaluations of performance on contracts subject to FAR 42.15 and this subpart. Interim evaluations are not required on contracts whose award anniversary is within 3 months of the end of the contract period of performance. The final evaluation will include an evaluation of the period between the last interim evaluation and the end of the contract period of performance. Interim performance evaluations are optional for SBIR/STTR Phase II contracts.

1842.1503 Procedures.

(a) The contracting officer shall determine who (e.g., the technical office or end users of the products or services) evaluates appropriate portions of the contractor's performance. The contracting officer should use the Contractor Performance Assessment Reporting System (CPARS) input template to obtain evaluations if the technical office or end users do not have access to CPARS. The evaluations are subjective in nature. Nonetheless, the contracting officer, who has responsibility for the evaluations, shall ensure that they are reasonable.

(b) The CPARS shall be used to document evaluations. This provides for a five-tiered rating covering the following attributes: quality, schedule, cost control (not required for firm-fixed-price contracts or firm-fixed-price contracts with economic price adjustment), business relations, management of key personnel, utilization of small business, and other considerations within the CPARS module; Quality, Key Consultants, Design/Engineering, and Construction within the ACASS module; and Quality, Management, Timely Performance, Labor Standards, Environmental Management, Occupational Health and Safety Standards within the CCASS module.

(i) For occupational health and safety, the following should be included in the rating based on applicability to the specific contract:

(A) Compliance with the approved health and safety plan.

(B) Safety record and incidence history.

(C) Procedures for the correction and control of hazards.

(ii) For environmental management, the following should be included in the rating based applicability to the specific contract:

(A) Compliance with the Center environmental management system (for on-site contracts).

(B) Use of environmentally preferable products and services.

(C) Compliance with contract sustainable acquisition requirements.

(c) For Cost Plus Award Fee or Fixed Price Award Fee type contracts, contracting officers shall complete the following evaluation information in the Award Fee Evaluation System (AFES) module in the NASA Acquisition Internet Service (NAIS):

(i) Available award fee amount.

(ii) Amount of award fee earned.

(iii) Award fee rating.

(iv) How the use of award fee did or did not motivate the contractor's overall cost, schedule and technical performance as measured against contract requirements in accordance with the criteria stated in the award fee plan.

(v) How the objectives were enhanced by using an award fee contract as stated in the determination and findings required at FAR 16.401(d).

(vi) Award fee determination meeting date.

(vii) Date Fee Determining Official determination notice to the contractor.

(viii) Date contractor was paid.

(ix) Numerical award fee score.

Center Procurement Offices shall monitor the information entered into Award Fee Evaluation System (AFES) for accuracy and completeness. The review should be conducted at least twice a year with the results included in the annual Center Self-Assessment.

(e) Center Procurement Offices shall conduct an evaluation of the Center's compliance with the reporting requirements in NFS 1842.1502(a). The evaluation shall include compliance with timeliness and the quality of the performance evaluations and shall be conducted at least twice a year. The results of these evaluations shall be included in the annual Center Self-Assessment.

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).

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.

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.

Subpart 1842.71—Reserved

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

(a) *Contracting officer responsibilities.*

(1) Contracting officers must ensure contracts require cost reporting consistent with both policy requirements and project needs. Contracting Officers shall monitor contractor cost reports on a regular basis to ensure cost data reported is accurate and timely. Adverse trends or discrepancies discovered in cost reports should be pursued through discussions with financial and project team members.

(2) Whenever cost performance threatens contract performance, contracting officers shall require corrective action plans from the contractors.

(3) The contracting officer shall document the review of the contractor's cost reports using the NASA Form (NF) 533 Monthly Supplemental Analysis template or a Center developed tool that includes the same analysis required by the agency-wide template.

(b) Reporting requirements.

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

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

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

See PIC 24-02 for guidance.

(3) NASA Form 533Q reporting may be waived by the contracting officer, with the concurrence of the center chief financial officer and cognizant project manager, for support service or task order contracts, when NF 533M reports and other data are sufficient to ensure accurate monthly cost accruals, evaluation of the contractor's cost performance, and forecasting of resource requirements.

(4) Where a specific contractual requirement differs from the standard system set forth in NPR 9501.2, NASA Contractor Financial Management Reporting, but is determined to be in the best interests of the Government and does not eliminate any of the data elements required by the standard NF 533 formats, it may be approved by the contracting officer with the concurrence of the center chief financial officer and the project manager. Such approval shall be documented and retained, with the supporting rationale, in the contract file.

(5) The contractor's internal automated printout reports may be substituted for the 533 reporting formats only if the substitute reports contain all the data elements that would be provided by the corresponding 533's. The contracting officer shall coordinate any proposed substitute with the installation financial management office.

(c) *Contract requirements*.

(1) Reporting requirements, including a description of reporting categories, shall be detailed in the procurement request, and reports shall be required by inclusion of the clause prescribed in 1842.7202. The contract schedule shall include report addressees and numbers of copies. The final agreed upon reporting categories shall be approved by the Center Chief Financial Officer or designee to ensure that data required for agency cost accounting will be provided by the reports. Reporting dates shall be in accordance with NPR 9501.2, except that earlier submission is encouraged whenever feasible. No due date shall be permitted which is later than the date by which the center financial management office needs the data to enter an accurate monthly cost accrual in the accounting system.

(2) The development of the cost reporting structure must be a collaborative effort by government personnel to include, as appropriate: technical, program management, procurement, financial, and resources personnel who will have a role in monitoring contractor performance, contract administration, or otherwise use the reporting data. The reporting structure, i.e., the specific reporting categories shall be included in the solicitation to inform prospective contractors of the reporting requirements. The final reporting structure will be finalized and agreed to by the government and the contractor.

(3) The contractor shall be required to submit an initial report in the NF 533Q format, time phased for the expected life of the contract, within 30 days after authorization to proceed has been granted. NF 533M reporting will begin no later than 30 days after incurrence of cost. NF 533Q reporting begins with the initial report.

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.

Subpart 1842.73—Audit Tracking and Resolution

1842.7301 NASA reportable contract audit follow-up process.

(a) As used in this subpart, the Reportable Audit Representative is the Center's designee for tracking the resolution and disposition of reportable audit reports.

(b) This section implements OMB Circular No. A-50 and NASA Policy Directive (NPD) 9910.1, "Government Accountability Office/NASA Office of Inspector General Audit Liaison, Resolution, and Follow-up."

(c) NASA's Audit and Assurance Information Reporting System (AAIRS) tracks all reportable contract audit reports where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that reportable contract audit report recommendations are resolved within six months after receipt of the audit report.

(d)(1) The Reportable Audit Representative shall enter into AAIRS all reportable contract audit reports as defined by Chapter 15, Section 6, of the DCAA Contract Audit Manual (CAM) where NASA has resolution and disposition responsibility. Until all audit recommendations are resolved and dispositioned, the information shall be updated at least quarterly. DCAA will provide to the NASA Headquarters Office of Procurement, Procurement and Grant Policy Division, a listing of reportable audit reports requiring resolution and disposition.

(2) The resolution and disposition of DCAA reportable contract audit reports, where NASA has resolution and disposition authority, are handled as follows:

(i) Audit recommendations pertaining to an individual NASA contract are the responsibility of the NASA contracting officer for that contract.

(ii) Audit recommendations impacting more than one NASA contract are the responsibility of the NASA contracting officer providing the preponderance of funding to the particular contractor for the contractor fiscal year covered by the audit report (lead contracting officer). The lead contracting officer from the Center with the preponderance of funding serves as lead and should furnish a copy of the reportable contract audit report to all NASA contracting officers with contracts impacted by the audit report. Those contracting officers should be provided the opportunity to participate in the negotiations or provide input into the negotiation strategy for resolving and dispositioning the audit recommendations.

(e) Reportable contract audit reports issued to DCMA in cases where contract administration has been delegated to DCMA are not required to be entered into AAIRS since DCMA is required to track and maintain these audit reports. NASA contracting officers shall communicate with the DCMA Administrative Contracting Officer (ACO), who has the authority to perform reportable contract audit resolution and disposition activities on these NASA contracts. This dialogue will be conducted at least semiannually regarding the status relative to the ACO's audit resolution and disposition activities documented in the contract file. During this dialogue, NASA contracting officers should also obtain projected reportable contract audit resolution and disposition dates in order to address any issues in a timely manner and ensure the timely close out of cost-type contracts.

1842.7302 Reportable audit disposition documentation.

For each DCAA reportable contract audit report where NASA has resolution and disposition authority, the NASA contracting officer shall submit disposition documentation (e.g. price negotiation memorandum) to the DCAA office that provided the audit report with a copy provided to the Center-designated Reportable Audit Representative.

PART 1843
CONTRACT MODIFICATIONS

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PART 1843
CONTRACT MODIFICATIONS

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.

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—

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

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

Subpart 1843.70—Undefinitized Contract Actions

1843.7001 Definitions.

"Undefinitized contract action (UCA)" means a unilateral or bilateral contract modification, or a delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. For purposes of tracking definitization schedules of UCAs, letter contracts are considered to be UCAs and will be tracked as such by the Headquarters Office of Procurement, Procurement Strategic Operations Division. Otherwise, the specific requirements, policies, and procedures for letter contracts are in FAR 16.603 and NFS 1816.603.

1843.7002 Policy.

(a) The contracting officer may issue undefinitized contract actions only on an exception basis, and must ensure that NASA liabilities and commitments are minimized. When an undefinitized contract action is justified and program requirements can be severed into smaller, discrete efforts, the contracting officer shall limit work authorized by the undefinitized contract action to the minimum severable effort required to satisfy the urgent program requirements. The contracting officer must acquire any remaining requirements through a separate, fully priced and definitized contract action.

(b) The contracting officer shall document the contract file for each UCA to justify issuance and include a Government estimate for the changed requirements. The contracting officer shall use the Justification and Approval of Undefinitized Contract Actions (UCAs) and Letter Contracts template to document the file for all UCA actions.

[PN 18-10]

1843.7003 Procedures.

(a)(1) Undefinitized contract actions shall be approved in writing by the head of the contracting activity (see NFS definition of "head of the contract activity" at NFS 1802.101.

(2) In emergency situations, approval may be given orally and subsequently confirmed in writing.

(3) The approval authorities in paragraphs (a)(1) of this section are not delegable.

(b)(1) The contracting officer shall issue undefinitized contract actions above the simplified acquisition threshold as bilateral agreements setting forth a ceiling or "not to exceed" (NTE) price for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the NTE shall be non-fee bearing. The contracting officer shall identify the ceiling price or NTE estimated cost in the undefinitized contract action separately from the pricing structure of the basic contract.

(2) The head of the contracting activity may waive the ceiling NTE price and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. The contracting officer shall document this waiver in the contract file.

(c) The contracting officer shall clearly define the changed contractual requirements in the UCA and shall limit the requirements to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed, and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than $1,000,000, and not excepted under subpart 1843.7004, the contracting officer shall obtain a 180 day funding profile from the contractor prior to execution of the undefinitized contract action.

(e) For undefinitized contract actions with a Government estimated cost or price greater than $1,000,000, the contracting officer shall include a requirement that the change be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions, if the contracting officer determines that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

[PN 18-10]

1843.7004 Exceptions.

(a) Exceptions to the requirement for head of the contracting activity approval of undefinitized contract actions are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding; or

(3) Modifications to decrease the contract value.

(b) For any of the modifications in paragraph (a) of this section, the contracting officer shall cite the exception and include complete supporting rationale for its applicability in the contract file.

(c) Exceptions to the requirements for Undefinitized Contract Actions are –

(1) Change orders invoked by any of the FAR 52.243 Changes Clauses, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract (e.g., engineering change proposals, value engineering change proposals).

[PN 24-13]

1843.7005 Definitization.

(a) The contracting officer should ensure undefinitized contract actions are sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitize UCAs within 180 days from date of issuance.

(b) The contracting officer shall document definitization negotiations in the contract file, clearly showing how the definitized price was determined and specifically documenting any variance between the original NTE price and the final definitized price.

PART 1844
SUBCONTRACTING POLICIES AND PROCEDURES

(*Revised February 17, 2016*)

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PART 1844
SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.2—Consent to Subcontracts

1844.202 Contracting officer's evaluation.

1844.202-1 Responsibilities.

(a) NASA contracting officers shall retain consent to subcontract authority unless delegation is approved in writing by the procurement officer.

(b) Contracting officers shall document subcontract consent reviews using the Subcontract Consent Review template.

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.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.

1844.302-70 DCMA-conducted contractor purchasing system reviews.
For contracts within their cognizance, NASA contracting officers shall be aware of purchasing system approval status and should become actively involved with the Defense Contract Management Agency (DCMA) in the Contractor Purchasing System Review (CPSR) process. DCMA has a CPSR Guidebook that is a helpful resource for the CPSR process. Involvement should include the following:

(a) Verifying that CPSRs are being conducted in accordance with FAR 44.302.

(b) Ensuring that purchasing system review specifically includes the business unit performing the NASA contract.

(c) Actively participating as a team member, or arranging NASA representation, on DCMA CPSRs to review areas of NASA-specific interest. At a minimum, such participation or representation shall be arranged when the DCMA CPSR review involves—

(1) Contractors with major NASA programs;

(2) Contractors' business units where the total dollar value of NASA contracts is substantial; or

(3) Any contractor system where the contracting officer has special concerns.

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMA CPSR team leader any areas of special emphasis regarding the contractor's purchasing system to ensure that the review is tailored to address any NASA concerns.

1844.302-71 NASA-conducted contractor purchasing system reviews.

If a NASA activity is the cognizant contract administration office, or after coordination with the cognizant DCMA CPSR office it is determined that a CPSR is required, but cannot be accomplished by DCMA, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader may vary the scope of review depending on the contractor and contracts involved and shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

1844.304 Surveillance.

1844.304-70 Contracting officer surveillance.

(a) In the period between complete CPSRs, NASA contracting officers shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of subcontract consent reviews. Other methods of surveillance, including periodic reviews of contractor purchasing records, may also be conducted. Contracting officers shall document the results of subcontract consent reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, the need for special reviews, and recommended areas of emphasis during future CPSRs.

1844.305 Granting, withholding, or withdrawing approval.

1844.305-70 Review of CPSR reports.

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers shall review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of purchasing system approval. Significant issues or

significant conflicts with DOD CPSR results should be formally referred to the Headquarters Office of Procurement, Procurement Strategic Operations Division.

PART 1845
GOVERNMENT PROPERTY

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PART 1845
GOVERNMENT PROPERTY

Subpart 1845.1—General

1845.102 Policy.

1845.102-70 NASA policy.

(a) In addition to the criteria cited in FAR 45.102 which must be demonstrated before providing property to contractors, contracting officers shall carefully consider the following factors when deciding if it is in the Government's best interest to provide Government property for the performance of a contract. Providing Government property—

(1) Increases the Government's administrative burden and requires recordkeeping and personnel;

(2) May dilute the contractor's overall responsibility and weaken guarantees, end-item delivery requirements, and other contract terms;

(3) May make NASA responsible for delays in that the Agency assumes responsibility for scheduling delivery of the property and the operability of the property;

(4) Carries its own inherent risk that the property may be lost, damaged, destroyed or misused, resulting in a loss of funds that could otherwise be used to support NASA's mission;

(5) When commercially available, may confer a competitive advantage to contractors who have not taken on the same investment risk as their competitors. Contractors who plan for the Government's provision of commercially available equipment are passing those investment risks to the Government; and

(6) May be counterproductive to socio-economic programs which encourage small businesses to develop through capital investment.

(b) The contracting officer shall obtain the approval of the Center Real Property Accountable Officer prior to negotiating, or entering into any real property leaseholds, permits, licenses or disposition actions. The contracting officer shall advise the Center Real Property Accountable Officer when the place of performance is on a NASA center or facility and the contractor will be offered space and utilities under NFS 1852.245-77.

1845.102-71 Solicitation and review procedures.

(a) Each solicitation, as applicable, shall include the following:

(1) A list of any Government property available to be furnished, quantities, locations, conditions, and any related information.

(2) A requirement that offerors identify any Government property in their possession proposed for use during contract performance. The items, quantities, locations, acquisition costs, and proposed rental terms must be provided, along with identification of the Government contract under which the property is accountable.

(3) A requirement that requested Government provided facilities be described and identified by the classifications in 1845.7101-1.

(4) A requirement that offerors provide, if applicable, the date of the last Government property control system review, a summary of the findings and recommendations, and contractor corrective actions taken.

(b) The contracting officer shall follow the procedures at NFS 1845.201-70 for center Industrial Property Officer (IPO) review.

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1845.103-70 General.

(a) Contracting officers are responsible for overall management of their contracts, including the management of Government property provided to contractors under NASA Contracts.

(b) Contracting officers shall fully document decisions to provide property, including authorization for contractors to purchase property as a direct cost to the Contract. This documentation shall clearly demonstrate that the provision of property is in the Government's best interests in accordance with FAR 45.102.

(c) Contracting officers shall review the contractor's requests for provision of Government property under the clause at 1852.245-70 to determine whether authorizing the provision of Government property is an appropriate business decision according to the policy at 1845.102-70(a).

(d) Contracting officers may solicit the opinion of the technical officer regarding the technical need for the property. However, technical need, in and of itself, is not sufficient reason for providing Government property. If the property is required to satisfy technical needs, it is still assumed to be in the Government's best interest to require the contractor to use contractor-owned property for contract performance.

(e) Contracting officers shall assure that all changes to contract property involving the provision of additional Government-furnished property or reduction of existing property are noted in the contract by insertion or modification of the clause at 1852.245-76, and are recorded or reported for recording in the appropriate NASA property management information records.

(f) Contracting officers shall document the file on the determination to provide Government property and shall forward copies of any approved requests to —

(1) The Center Deputy Chief Financial Officer (DCFO) when an item of property or, in the case of a contract for construction, the total value of property being constructed by the contractor is expected to result in the acquisition or construction cost exceeding the NASA capitalization threshold of $500,000; and,

(2) The NASA Center IPO, when the contractor is not authorized to conduct its own screening of available inventory.

(g) IPOs shall coordinate screening with center reutilization personnel to determine the availability of existing Government inventory and excess.

(1) The IPO shall notify the contracting officer of the availability of property as soon as possible after receipt of the approved request from the contracting officer.

(2) The IPO shall assist the contracting officer in the coordination of the transfer and oversee property documentation of the transfer of existing Government property to the contractor.

1845.104 Responsibility and liability for Government property.

(b) When the Property Administrator, with the concurrence of the Industrial Property Officer (IPO), determines and reports that the contractor's property management practices are inadequate and/or present an undue risk to the Government, contracting officers shall revoke the Government's assumption of risk or take other action to mitigate the risk of loss, damage, destruction, or theft of Government property.

1845.106 Transferring Accountability.

(a) When furnishing existing Government property to the contractor, contracting officers shall—

(1) Insert NFS clause 1852.245-76, List of Government Property Furnished Pursuant to FAR 52.245-1, if not already included in the contract; and

(2) Modify the list in 1852.245-76 to include any property furnished after award.

(b) In addition to modification of the list, transfers of property shall be recorded on a "shipping" or "transfer" document such as the DD Form 1149 "Requisition and Invoice/Shipping Document."

(1) Centers may use equivalent documents that contain the same information.

(2) This requirement includes physically transferred property and property transferred in place.

(3) Contracting officer technical representatives are responsible for creation of shipping documents, based on the contractor's requests and contracting officer's approval, and are considered "shippers" for this purpose.

(4) Shippers will segregate items valued over $500,000 and request the transfer of these items on separate documents.

(5) The transfer documents must be complete and must include the following information for all items with a value greater than $5,000:

(i) Description of Property.
(ii) Property Identification Number.
(iii) Value.
(iv) Capital Value (if applicable).
(v) Property Classification.
(vi) Federal Supply Classification.

(vii) Gaining Contract.
(viii) Acquisition Date.

(6) Contracting officers must approve all shipping documents prior to property movement.

(c) In addition to the requirements in paragraphs (a) and (b), when property valued at $500,000 or more is received and accepted by NASA or NASA's representative within the contractor's facilities, and that property is to remain in the contractor's custody for further work or to be otherwise used in the performance of the contract, the property must be added to the appropriate NASA property system in accordance with NPR 4200.1, NASA Equipment Management Procedural Requirements and NPR 4200.2, Equipment Management Manual for Property Custodians.

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 no charge basis.

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

(5) 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 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 FAR 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 FAR 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.

(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.

Subpart 1845.2—Solicitation and Evaluation Procedures

1845.201 Solicitation.

1845.201-70 NASA solicitation preparation procedures.

(a) The contracting officer shall provide a copy of the solicitation (or contract if no solicitation is used) to the center Industrial Property Officer (IPO) for review when—

(1) The value of the acquisition exceeds the simplified acquisition threshold and the work is to be performed within the physical confines of the center;

(2) Existing Government property may be furnished; or

(3) Contractors may acquire property that will be titled to the Government under the provisions of FAR 52.245-1, Government Property.

(b) IPOs shall review the solicitation to—

(1) Ensure the correct application of property clauses based on the contract type, situation, and product or services ordered;

(2) Ascertain the contract's possible impact on center property or logistics operations and advise the center's Supply and Equipment Management Officer of those possible impacts; and

(3) Assure that appropriate property transactions for existing Government property, from internal sources and prior contracts, have been properly reported to NASA property and financial systems.

(c)(1) Items of Government property used to support NASA programs often become historically significant. In addition, property used by NASA programs often has value that exceeds other property with identical material or physical characteristics. This is particularly true for property that has flown in space. Descriptions of physical characteristics and condition are insufficient to determine an item's historic significance or real value. NASA Center Exhibit Managers are responsible for determining whether property meets the criteria for designation as historically significant. It is essential that items of historic significance are retained for the benefit of current and future generations. NASA must also obtain maximum value for property offered for sale.

(2) The contracting officer shall contact the Center Exhibit Manager to determine whether 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.

(3) Center Exhibit Manager shall advise the contracting officer when they believe that property produced or acquired for the Government under the contract may have increased historic significance or increased value due to its use in support of NASA activities or programs.

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1845.201-71 Plant reconversion and plant clearance.

The Senior Procurement Executive is the approval authority for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion or plant clearance until after award.

1845.202 Evaluation procedures.

1845.202-70 NASA evaluation procedures.

(a) The contracting officer shall request Industrial Property Officer (IPO) or Property Administrator (PA) assistance in evaluations of the offeror's proposed systems, standards and practices for the management of Government property.

(b) The contracting officer shall provide the offeror's proposed property management standards and practices to the IPO for review and evaluation prior to award.

(c) IPOs shall review proposals to determine whether or not the offeror's proposed industry leading standards and practices and/or voluntary consensus standards are sufficient to manage property, from planning through disposition, under the circumstances of the contract.

(1) If the IPO is unfamiliar with the offeror, the circumstances of the contract or the performance situation, the IPO may request the assistance of the cognizant PA for evaluation of the standards, practices, situation and history of property management performance at the offeror's place of performance.

(2) The IPO shall provide a written evaluation, listing any proposed changes or improvements, to the contracting officer prior to award.

(d) The contracting officer shall require changes or improvements to the offeror's property management practices, standards, or processes as recommended by the IPO. The contracting officer shall advise the offeror that its property management practices, standards, and processes will not be considered adequate for the protection, preservation, and management of Government property, and that the Government will not accept risk under the property clause until the recommended changes or improvements are made.

(e) When an offeror's proposal requests the Government to provide commercially available equipment, and the commercially available equipment is not required as an end item deliverable or part thereof, the contracting officer should assure the integrity of the competitive process by —

(1) Adjusting the offeror's proposal to compensate for the value of the Government-provided, commercially available equipment; or

(2) Charging appropriate rent in accordance with the clause at FAR 52.245-9, Use and Charges. As the purpose for rent is to obtain just consideration for the Government's assumption of risk and cost, rent for commercially available equipment provided after award may not be treated as an allowable direct cost under the contract.

Subpart 1845.3—Authorizing the Use and Rental of Government Property

1845.301 Use and rental.

1845.301-70 Use of property on other Government contracts.

(a) NASA contracting officers having cognizance over NASA property may authorize its rent-free use on other NASA contracts and contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

(b) Contracting officers shall obtain the concurrence of the gaining contracting officer when they intend to authorize the rent free use of Government property for performance under the gaining contracting officer's cognizance.

1845.301–71 Use of Government property for commercial work.

(a) The coverage at FAR 45.3 applies to a contractor's commercial (any non-Government) use of any NASA equipment.

(b)(1) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All equipment having a unit acquisition cost of less than $500,000 at any single location may be averaged over a quarterly period. Equipment having a unit acquisition cost of $500,000 or more shall be considered on an item-by-item basis.

(2) Approvals for non-Government use, may not exceed 50 percent of total use and may not extend beyond the contract period of performance. Use or rental of Government property must incur charges for all portions that are used for nongovernment commercial purposes.

(3) Requests for the approval shall be submitted to the head of the contracting activity at least 6 weeks in advance of the projected use and shall include—

(i) The number of equipment items involved and their total acquisition cost; and

(ii) An itemized listing of equipment having an acquisition cost of $500,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

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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.

(b) Contracting officers shall obtain written authorization from the Senior Procurement Executive and concurrence from the Manager of Contract Property Programs, Logistics Division, Office of Strategic Infrastructure; the Office of the General Counsel (Headquarters); and the Headquarters Office of External Relations before allowing the use of Government production and research property on work for foreign countries or for international organizations.

(c) Contracting officers shall forward requests, along with a summary of the circumstances involved, including as a minimum—

(1) The name of the requesting contractor;

(2) The number of the contract under which the property is controlled;

(3) A description of the property;

(4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;

(5) A description of the articles to be manufactured or services to be performed;

(6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the property beyond the expected expiration or completion date of the NASA contract;

(7) A statement that the use of Government property is consistent with the best interests of the United States;

(8) A statement that such use is legally authorized; and

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States (e.g., an approved license or agreement from the Department of State or Department of Commerce).

(d) Use, if approved, shall be subject to rent in accordance with FAR 45.3.

1845.303 Use of Government property on independent research and development programs.

(a) The contracting officer shall not authorize contractor use of Government property for independent research and development on a rent-free basis except in unusual circumstances and after a written determination that—

(1) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and

(2) No competitive advantage will accrue to the contractor through such use (see FAR 45.103(a)(2)).

(b) Contracting officers shall utilize the same approval requirements as under 1845.301-71.

Subpart 1845.4—Reserved

Subpart 1845.5—Support Government Property Administration

1845.501-70 General.

(a) The contracting officer will provide copies of contracts, modifications and related documents to the Center Industrial Property Officer.

(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.

(a) NASA contracting officers shall delegate property administration and plant clearance for contracts performed outside of NASA centers, installations and facilities when:

(1) The contract is a cost type contract;

(2) The contract is a fixed price contract that contains a cost element allowing or requiring the contractor to acquire property on behalf of the Government and that property is titled to the Government by operation of the FAR property clause;

(3) The contract is a fixed price contract and Government property is furnished; or,

(b) NASA Contracting officers may retain property administration and plant clearance, in accordance with 1845.503-70, only when there is a compelling need, such as a security requirement or safety requirement that would prohibit a non-cleared property administrator or a plant clearance officer from performing these services.

(c) Delegation of property administration activities to other agencies will be made according to the special delegation instructions issued by Logistics Division, Office of Strategic Infrastructure. Variance from these delegations instructions must be authorized by Logistics Division, Office of Strategic Infrastructure.

(d) Contracting officers shall retain property administration and plant clearance for all contractors where the place of performance is within a NASA Center, Installation or Facility.

(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.

1845.503-71 Retention of property administration and plant clearance.

(a) Contracting officers may retain property administration functions and responsibilities by written notification of the Center Industrial Property Officer. Contracting officers who retain property administration must perform property administration in accordance with the requirements of this subsection, FAR Part 45, and DOD instructions for property administration. The written notification must contain—

(1) A plan for performance of property system reviews;

(2) A procedure that allows for the maintenance of property management records for items transferred to and from the contractor, the collection and dissemination of property and property related financial reports and the proper disposition of Government property in accordance with Federal Management Regulations and FAR 45.6;

(3) A plan for coordination of support property administration functions with the cognizant agency;

(4) Procedures for disposition of Government property, according to FAR and Federal Management Regulations, and for required reporting of disposition actions; and,

(5) Concurrence of the center procurement officer.

(b) When the contracting officer retains property administration and plant clearance, the contracting officer shall provide annual reports to the Industrial Property Officer and the Center Property Accountant detailing—

(1) The status of the annual property control system review;

(2) Any incidence of Loss, Damage or Destruction and the contracting officer's determination of liability;

(3) The status of the contractor's physical inventory of property; and

(4) Final reports of disposition of Government property.

1845.504-70 Responsibilities of the Industrial Property Officer.

This section describes the functional management responsibility for contract property. Beyond individual contracting officers, each NASA installation director will appoint an industrial property officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire contract property management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are:

(a) Provide a focal point for all management of contract property, including Government property (Government-furnished and contractor-acquired) provided to universities, non-profit research institutions and to industry.

(b) Provide guidance to contracting and other personnel on the NASA property provisions.

(c) To the extent feasible, review property provisions of acquisition plans, solicitations, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure that vesting-of-title determinations are made and documented pursuant the applicable FAR Government property clause and financing clauses such as the Progress Payments Clause.

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries for all contracts for which property administration has been delegated. Advise the Manager, Contract Property Programs, Logistics Division, Office of Strategic Infrastructure of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Review, analyze and verify that the contractor's property management system is capable of producing a correct and complete NASA Form 1018, NASA Property in the Custody of Contractors.

(h) Review property administrators' approvals of relief of responsibility for lost, damaged, and destroyed property and question the contractor regarding the need for any excessive or repetitive approvals.

(i) When appropriate, make recommendations to source and performance evaluation boards regarding property management and award fee criteria and evaluations regarding property management.

(j) Monitor plant clearance status to preclude delays in contract closeout.

(k) Maintain contract property files for all transactions and correspondence associated with each contract. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract and forward for inclusion with the official completed file.

(l) Perform, or assure the performance of, on-site property administration and plant clearance and the property is not subject to the clause at 1852.245-71, Installation-Accountable Government Property.

1845.505-70 Responsibilities of the Property Administrator.

(a) When property administration is not delegated to DOD, the NASA property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. The property administrator's responsibilities include—

(1) Developing and applying a property system review program for each contractor under the property administrator's cognizance;

(2) Evaluating the results of contractor's property control activities and, when necessary, recommending that the contracting officer revoke the Government's assumption of risk for loss, damage or destruction of Government property;

(3) Advising the contracting officer of other significant problems the property administrator cannot resolve, and recommending appropriate action, which may include disapproval of the contractor's property control system;

(4) Resolving property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Headquarters Office of the Inspector General, the Defense Contract Audit Agency (DCAA), and other Government agencies; and

(5) Recognizing the functions of other Government personnel having cognizance of Government property and obtaining their assistance when required. (These functions include, but are not limited to, contract cost audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.) Property Administrators shall use, and not repeat, the work of Government auditors or other cognizant Government review activities unless that work does not satisfy the property control system audit requirements set forth in the DoD property guidance and related NASA instruction.

(b) Property administrators will assist the contracting officer in pre award activities.

(1) Property administrators will review the contractor's proposed standards and practices to assess their suitability for the pending contract and will so advise the contracting officer.

(2) Property administrators will advise the contracting officer regarding the contractor's demonstrated past performance in property management, including their ability or inability to perform to the proposed standards or execute the practices they have proposed for the pending contract.

(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.

(e) After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall ensure prompt disposition. For equipment, the property administrator shall—

(1) Assure the preparation and submission of individual reports required of the contractor;

(2) Verify the permit certifications required by the forms; and

(3) Transmit the report to the NASA Industrial Property Officer.

(f) Upon completion or termination of a contract, the property administrator shall—

(1) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(2) Advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

(3) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review and sign a determination that—

(i) Disposition of Government property has been properly accomplished and documented;

(ii) Adjustment documents, including any request of the contractor for relief from responsibility, have been processed to completion;

(iii) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(iv) All questions regarding title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(v) The contract property control record file is complete and ready for retirement.

(4) When final review pursuant to paragraph (a) of this section reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, Contract Administration Completion Record, or equivalent.

(5) The Property Administrator shall forward the complete and signed DD Form 1593 to the contracting officer, and so annotate the Property Summary Data Record.

(6) The contracting officer shall include the DD form 1593 in the official contract file.

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;

(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.

(n) Seeking the advice and concurrence of the General Counsel regarding antitrust actions when needed.

(o) Assuring that the center equipment manager is advised of, and receives documentation for, all capital valued property that has been reported for disposition.

(p) Advising the contracting officer regarding all disposition actions and activities.

Subpart 1845.6—Reporting, Reutilization, and Disposal

1845.602-3 Screening.

(a) Property Disposal Officers (PDOs) are the center focal points for intra-agency reutilization screening.

(1) When property is reported for disposition through PCARSS or on manual inventory schedules, PDOs shall make that information available to procurement and program offices seeking to acquire similar, new property in accordance with the agency inventory and other agency excess utilization requirements of FAR Part 8.

(2) When property is reported for disposition through NASA DSPL systems, the PDO shall screen and process the disposition in accordance with NPR 4200.1, NASA Personal Property Disposal Procedural Requirements and related guidance.

(b) Waiver of screening requirements. The Director, Logistics Division Office of Strategic Infrastructure will approve deviations from intra-agency screening requirements.

1845.603 Abandonment, destruction or donation of excess personal property.

The center property disposal officer (PDO) shall review abandonment or destruction determinations in accordance with NPR 4300.1.

1845.604 Restrictions on purchase or retention of contractor inventory.

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

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

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

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

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

1845.604-4 Proceeds of sale.

(a) Sale of surplus contractor inventory. The plant clearance officer shall maintain an open suspense record until verifying that credit has been applied, unless another Government representative has specifically assumed this responsibility.

1845.604-70 Contractor inventory in foreign countries.

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

1845.605-70 Inventory disposal report.

A copy of Standard Form 1424, Inventory Disposal Report, shall be provided to the center industrial property officer or the PDO.

1845.606 Disposal of scrap.

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.

(b) The center property administrator is authorized to approve the contractor’s scrap procedure. Before approval, the plant clearance officer shall review the procedure, particularly regarding sales. The plant clearance officer shall ensure that the procedure contains adequate requirements for inspecting and examining items to be disposed of as scrap. When the contractor’s procedure does not require physical segregation of Government-owned scrap from contractor-owned scrap and separate disposal, care shall be exercised to ensure that a contract change that

generates a large quantity of property does not result in an inequitable return to the Government. In such a case, the property administrator shall make a determination as to whether separate disposition of Government scrap would be appropriate.

(c) A plant clearance case shall not be established for production scrap disposed of through the contractor's approved scrap procedure.

(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.

1845.606-71 Recovering precious metals.

Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported through the NASA PDO for disposition in accordance with NASA instructions.

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.

1845.607-2 Recovering precious metals.

(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.

1845.610-4 Contractor inventory in foreign countries.

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

Subpart 1845.70—Reserved

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.

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.

(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.

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

and space probes and their components should be excluded from WIP as those items will be accounted for by NASA.

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 affect 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.

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.

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).

1845.7101-5 Contractor's privileged financial and business information.

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA Centers.

PART 1846
QUALITY ASSURANCE

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PART 1846
QUALITY ASSURANCE

Subpart 1846.1—General

1846.102 Policy

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

1846.103 Contracting Office Responsibilities.

(f) Ensuring the request originator has annotated on the NF 1707 whether the acquisition involves the procurement of safety critical parts, as defined in NPR 8735.1, Procedures for Exchanging Parts, Materials, and Safety Problem Data Utilizing the Government-Industry Data Exchange Program (GIDEP) and NASA Advisories, and that any such safety critical parts have been GIDEP screened.

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.

Subpart 1846.4—Government Contract Quality Assurance

1846.401 General.

(a) The Government may conduct inspection and other quality requirements through "insight" or “oversight.”

(i) Insight requires the monitoring of contractor quality data and Government-identified metrics and contracted milestones, and may also involve the review of contractor work procedures and records. Insight is a continuum that can range from low intensity, such as reviewing quarterly reports, to high intensity, such as performing surveys and reviews.

(ii) Oversight occurs in line with the contractor's processes. The Government retains and exercises the right to concur or non-concur with the contractor’s decisions affecting product conformity. Non-concurrence must be resolved before the contractor can proceed. Oversight is a continuum that can range from low intensity, such as quality system audits, or Government concurrence in reviews (e.g., preliminary design review or critical design review), to high intensity oversight in which the Government has day-to-day involvement in the contractor’s decision making process (e.g., mandatory hardware inspections or process witnessing). The decision to use insight or oversight is based on an assessment of the risk

inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as a performance-based acquisition.

(iii) The quality assurance surveillance plan (QASP) contents may range from low-intensity, insight-only functions to high-intensity oversight functions depending on the acquisition's criticality, complexity, contractor past performance, and other risk factors. The project office prepares the QASP in conjunction with the statement of work and periodically adjusts it thereafter based on changing risk factors as the contract requirement progresses through acquisition planning, source selection, and contract administration. The QASP shall not be included in the contract. Detailed requirements and guidance concerning QASP development and administration are provided in NPR 8735.2, Management of Government Quality Assurance Functions for NASA Contracts.

1846.407 Nonconforming supplies and services.

(h) NASA personnel at all levels are responsible for reporting to the Office of Inspector General and the NASA Director, Acquisition Integrity Program (AIP), when they become aware of noncompliant conditions or failure experiences which may constitute evidence of fraud, malpractice, or other serious misconduct. Suspected counterfeit goods shall not be returned to the contractor without the authorization of the AIP Director.

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).

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.

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.

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.

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/forms/type/TOP.

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-numerics shall be used when more than 9,999 numbers are required. Alpha-numerics 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 (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. Reissuance 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 results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering "PAYMENT COPY" in approximately one-half-inch outline-type letters with “FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17 -- QUANTITY SHIP/REC'D.*

(1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" to designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18 -- UNIT.* Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage.

(u) *Block 19 -- UNIT PRICE.* Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20 -- AMOUNT.* Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21 -- CONTRACT QUALITY ASSURANCE.* The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) *"A. ORIGIN."*

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) *"B. DESTINATION."*

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance or 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 activity (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23 -- CONTRACTOR USE ONLY.* This block is provided and reserved for contractor use.

1846.672-2 Consolidated shipments.
When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672-3 Multiple consignee instructions.
The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14 - Enter "See Attached Distribution List."

(b) Block 15 - The contractor may group item numbers for identical stock/part number and description.

(c) Block 17 - Enter the "total" quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

1846.672-4 Correction instructions.
When, because of errors or omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 or 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".

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.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.
The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts 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).

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.

1846.703-70 Additional criteria.
In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) Cost of correction or replacement, either by the contractor or by another source, in the absence of a warranty;

(b) The warranty as a deterrent against the furnishing of defective or nonconforming supplies;

(c) Whether the contractor's quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective quality program;

(d) Reliance on "brand-name" integrity; and

(e) Whether a warranty is regularly given for a commercial component of a more complex end item.

1846.704 Authority for use of warranties.

(1) A warranty clause may be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703-70 and FAR 46.703.

(2) Except for the warranty of commercial products and commercial services (see FAR 12.404 and 46.709), and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the procurement officer or a designee. This decision may be made either for individual acquisitions or classes of acquisitions.

(3) Warranties required by applicable architect-engineer specifications shall be included in construction contracts.

[PN 23-16]

1846.770 Administration.
When notified of a defect in warranted items, the contracting officer should ascertain whether the warranty is currently in effect and ensure that the contractor is given proper and timely notice of the defect.

Subpart 1846.70 — Counterfeit Electronic Part Detection and Avoidance.

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.

[PN 20-08]

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.

[PN 20-08]

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

(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.

[PN 20-08]

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.

[PN 20-08]

PART 1847
TRANSPORTATION

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PART 1847
TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200-70 Definitions.

As used in this subpart, consistent with 41 C.F.R. 102-33.20 -

"Government aircraft" means manned or unmanned aircraft operated for the exclusive use of an executive agency. Government aircraft include—

(1) Federal aircraft (see definition for "Federal aircraft" in this section); and

(2) Aircraft hired as commercial aviation services (CAS). CAS include—

(i) Leased aircraft for exclusive use for an agreed upon period of time (The acquiring executive agency operates and maintains the aircraft);

(ii) Capital lease aircraft for which the leasing agency holds an option to take title;

(iii) Charter aircraft for hire under a contractual agreement for one-time exclusive use that specifies performance (The commercial source operates and maintains a charter aircraft);

(iv) Rental aircraft obtained commercially under an agreement in which the executive agency has exclusive use for an agreed upon period of time (The executive agency operates, but does not maintain, a rental aircraft);

(v) Contracting for full services (i.e., aircraft and related aviation services for exclusive use); or

(vi) Obtaining related aviation services (i.e., services but not aircraft) by commercial contract, except those services acquired to support a Federal aircraft.

"Federal aircraft" means manned or unmanned aircraft that an executive agency owns (i.e., holds title to) or borrows for any length of time. Federal aircraft include—

(1) Bailed aircraft: Federal aircraft that is owned by one executive agency, but is in the custody of and operated by another executive agency under an agreement that may or may not include cost-reimbursement. Bailments are executive agency to executive agency agreements and involve only aircraft, not services;

(2) Borrowed aircraft: aircraft owned by a non-executive agency and provided to an executive agency for use without compensation. The executive agency operates and maintains the aircraft;

(3) Forfeited aircraft: aircraft acquired by the Government either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States;

(4) Loaned aircraft: Federal aircraft owned by an executive agency, but in the custody of a non-executive agency under an agreement that does not include compensation; and

(5) Owned aircraft: an aircraft for which title or rights of title are vested in an executive agency.

"Unmanned Aircraft Systems (UAS)" means an unmanned aircraft and its associated elements related to safe operations, which may include but not be limited to control stations, data communications links, support equipment, payloads, flight termination systems, and launch/recovery equipment. The unmanned aircraft (UA) is the flying component of the system, flown by a pilot via a ground control system, or autonomously through the use of an on-board computer, communication links, and any additional equipment necessary for the unmanned aircraft to operate safely. The Federal Aviation Administration issues either an Airworthiness Directive (AD) or a Certificate of Authorization (COA) for the entire system, not just the flying component of the system. Reporting of UAS costs and flight hours is only required if the accumulated costs for acquisition and operations meets the agency's threshold for capitalization, and the UAS has a useful life of two years or more.

[PN 18-02]

1847.200-71 Acquisition of Aircraft and Aircraft Services.

(a) Program and project coordination with the Center Flight Operations Office is required for the acquisition of Government aircraft or aircraft services, including federal aircraft, commercial aviation services (CAS) and unmanned aircraft systems (UAS).

(b) Prior to releasing any solicitation or awarding any contract for aircraft or aircraft services, the requiring office shall obtain concurrence from the Center Flight Operations office utilizing the NASA Form 1707, that the contemplated acquisition complies with NASA aviation safety program requirements stipulated in NPD 7900.4, NASA Aircraft Operations Management, and NPR 7900.3, Aircraft Operations Management. If the Center does not have a Flight Operations office, concurrence from another Center's Flight Operations office designated by the Aircraft Capability Management Office in the Mission Support Directorate at NASA Headquarters is required.

(c) Requiring offices shall use the mandatory contracts at A-102.7 for all aircraft operational support service requirements."

[PN 18-02, PN 24-10]

1847.207-10 Discrepancies incident to shipments.

NASA personnel shall also report discrepancies and adjust claims for loss of and damage to Government property in transit in accordance with NPR 6200.1, NASA Transportation and General Traffic Management.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

NASA has export licensing privileges for moving commodities to foreign destinations. Contracting officers shall request the advice of the Center Export Administrator to ensure full and appropriate use is made of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

In contracts providing for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state: "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor."

1847.305-13 Transit arrangements.

(a)(3)(ii) When the provision at FAR 52.247-56 is used, the solicitation shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

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.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

(d)(i) The transportation officer in each installation shall establish and maintain a register to reflect adherence to the Cargo Preference Act. The register shall contain data related to shipments made by the installation and by NASA contractors. Where no transportation officer is available, it shall be maintained by the contracting office. The register shall contain pertinent details of ocean shipments including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. The register shall be maintained current and organized so that adherence to the Cargo Preference Act can be ascertained at all times. To the maximum practicable extent, compliance with the 50-percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis; any deficiencies in maintaining compliance shall be corrected by the end of the calendar year.

(ii) On the basis of the registers maintained under paragraph (d)(i) of this section, the official maintaining the register shall submit quarterly reports reflecting ocean shipments to the Division of National Cargo, Office of Market Development, Maritime Administration, Department of Transportation, Washington, DC, 20590. Negative reports are required when applicable.

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 1848
VALUE ENGINEERING
(*September 2015*)

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PART 1848
VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

(a) The Senior Procurement Executive is the approval authority for exemptions. In accordance with OMB Circular A-131 and the Chief Financial Officers Act of 1990 (Public Law 101-576) (CFO Act), the Director of the Procurement and Grant Policy Division (PGPD) is the Senior Accountable Official (SAO) responsible for coordinating, overseeing, and ensuring the appropriate consideration and use of Value Engineering as set forth in FAR Part 48.

(f) In calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

[PN 20-03]

1848.103 Processing value engineering change proposals.

(a) Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract with the following information:

(i) Date of VECP receipt.

(ii) Date for notifying the contractor of VECP acceptance or rejection.

(iii) Notification of the potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted.

(iv) Request for a technical evaluation, with complete rationale for recommended acceptance or rejection, to include the following if acceptance is recommended:

(A) An estimate of the type of savings, Government costs, etc., that can be expected from its acceptance.

(B) A procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part.

(C) Additional funds if acceptance of the VECP results in negative instant contract savings.

(v) Technical evaluation due date.

1848.104 Sharing arrangements.

1848.104-3 Sharing collateral savings.

(a) The contracting officer is authorized to make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2--Contract Clauses

1848.201 Clauses for supply or service contracts.

(a)(6) The Senior Procurement Executive is the approval authority for exemptions.

(b) The contracting officer shall not insert the clause at FAR 52.248-1, Value Engineering, either with or without its Alternates, in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might benefit from application of VE techniques, the contracting officer shall consider inserting the VE incentive clause at FAR 52.248-1 with any applicable Alternate(s), and establish the applicability of the clause to that part.

(c) Except as prescribed in paragraph (b) of this section, the contracting officer shall insert the clause at FAR 52.248-1 with its Alternate I in initial production contracts for major systems, and major systems R&D contracts for full-scale development, unless the contracting officer determines in writing that its use is inappropriate. Use of Alternate I is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that lend themselves to VE.

(d) The contracting officer shall insert the clause at FAR 52.248-1 with its Alternate II under the conditions prescribed in paragraph (c) of this section.

PART 1849
TERMINATION OF CONTRACTS

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PART 1849
TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101-70 NASA authorities and responsibilities.

(a) Installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. In addition to the responsibilities described in this part and FAR part 49, such duties should include—

(1) Reviewing NASA Forms 1412, Termination Authority;

(2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract; and

(3) Issuing notices of termination, reinstatement, and rescission to contractors.

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the negotiation of termination settlement function shall be made in accordance with FAR subpart 42.2 and subpart 1842.2.

[PN 18-06]

1849.101-71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the activity initiating the procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

1849.102 Notice of termination.

1849.102-70 Prior notification of significant contract terminations.

(a) If the contracting officer considers that a contract termination at any dollar amount is of significant interest to Headquarters or has agency public information implications, the Headquarters Office of Procurement, Procurement Strategic Operations Division, should be contacted to discuss a possible Administrator Notification of a Significant Contract Action (ANOSCA) and/or NASA Headquarters Public Announcements (PA). See 1805.303-71.

[PN 18-06]

1849.102-71 Prior clearance of contract terminations resulting from a major breach of safety or security.
The Senior Procurement Executive, through the Programs Operations Division, must be notified prior to taking any action to terminate because of a major breach of safety or security.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105-70 Termination docket checklist.
The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist.

1849.106 Fraud or other criminal conduct.
If the Terminating Contracting Officer (TCO) suspects fraud or other criminal conduct when negotiating termination settlements, the TCO shall notify the Suspending and Debarring official in accordance with the procedures in 1809.406-3.

[PN 18-06]

1849.110 Settlement negotiation memorandum.

1849.110-70 Memorandum contents.
The TCO shall include the following information in the settlement negotiation memorandum. Contractors and subcontractors are encouraged to use this format appropriately modified for subcontract settlements submitted for review and approval.

(a) *General information.*
(1) *Identification.*
(i) Name and address of the contractor and any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.
(ii) Names and titles of contractor and Government personnel who participated in the negotiation.
(2) *Description of terminated contract.*
(i) Contract number
(ii) Date of award;
(iii) Contract type;
(iv) General description of contract items;
(v) Total contract price; and
(vi) Applicable contract termination provisions and clause.
(3) *Termination notice.*
(i) Date of the termination notice;
(ii) Effective date of termination;
(iii) Scope and nature of termination (complete or partial);
(iv) Items terminated;
(v) Unit prices;

(vi) Total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vii) Whether the termination notice was amended and, if so, why;

(viii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly;

(ix) Any redirection of common items and return of goods to the contractor's suppliers; and

(x) Extent of contract performance and timely deliveries by the contractor.

(b) *Contractor's settlement proposal.*

(1) *Date and amount.* Date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) *Basis of claim.* E.g., inventory, total cost, or other basis, including an explanation of any approvals granted in connection with submission on other than an inventory basis.

(3) *Examination of proposal.* Types of reviews made and by whom (audit, engineering, legal, or other).

(c) *Tabular summary of contractor's claim and the settlement.* The cost elements/items, the amounts claimed, the Government recommended position (including auditor, field, and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, previously reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The summary of the negotiated settlement shall include the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(d) *Settlement narrative summary.*

(1) Contractor's cost.

(2) Profit/Fee.

(3) Settlement expenses not included in the audit.

(4) Number and dollar amount of any subcontractor settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) Total amount of any partial payments.

(6) Total amount of unliquidated progress or advance payments.

(7) Claims of the Government against the contractor included in settlement agreement reservations.

(8) Assignments, including the name and address of each assignee.

(9) Disposal credits.

(10) Status of plant clearance actions and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations, including a consolidated closing plant clearance report, if applicable.

(11) Status of Government property accountability.

(12) Disposition of any special tooling, if applicable.

(13) Proposed reservations of rights to the Government or to the contractor.

(e) *Recommendation.* Amount of the gross settlement recommended and TCO statement that it is fair and reasonable to the Government and the contractor.

(f) *TCO Signature and date.*

[PN 18-06]

1849.111 Review of proposed settlements.

(1) Settlements shall be reviewed in accordance with center-prescribed procedures.

(2) The TCO may authorize the contract administration office cognizant of a lower-tier subcontractor to grant approval or ratification of proposed subcontractor settlements described in FAR 49.108-3(c) that are first reviewed and referred by the prime contractor to the TCO. This procedure is not applicable to settlements between the contractor and its first tier subcontractors.

PART 1850
EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

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PART 1850
EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

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 information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

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.

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.

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.

(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 conditions of insurance in relation to the unusually hazardous risk.

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.

1850.104-371 Indemnification for NASA Launch Services and Reentry Services.

(a) Section 305 of the NASA Transition Authorization Act of 2017 (P.L. 115-10) provides NASA discretion to indemnify contractors providing launch services and re-entry services against successful claims by third parties for death, bodily injury, or loss of or damage to property. In addition, these claims may include reasonable expenses of litigation or settlement. These claims may originate from launch services and reentry services carried out under the contract that the contract defines as unusually hazardous or nuclear in nature.

(b) Contractor requests for indemnification in accordance with Section 305 of the NASA Transition Authorization Act of 2017 (P.L. 115-10) shall be submitted to the cognizant contracting officer for the contract for which the indemnification is requested and shall be submitted in accordance with NFS 1850.104-3(a) and FAR 50.104-3(a). The contracting officer shall coordinate any contractor requests received with Agency and Center legal offices and process the request in accordance with NFS 1850.104-3(b) and FAR 50.104-3(b), with the exception of the requirement at FAR 50.104-3(b)(iii).

(c) If recommending approval, the contracting officer shall forward the required information to the Headquarters Office of Procurement, Procurement Strategic Operations Division, in accordance with NFS 1850.104-3(b).

(d) The NASA Administrator is the approval authority by a Memorandum of Decision.

(e) Upon receipt of the Memorandum of Decision the contracting officer shall incorporate the specific terms and conditions in Section H of the contract.

(f) Subcontractor requests for indemnification in accordance with Section 305 of the NASA Transition Authorization Act of 2017 (P.L. 115-10) shall be submitted and processed in accordance with NFS 1850.104-370.

[PN 19-02]

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.

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USE OF GOVERNMENT SOURCES BY CONTRACTORS

(Revised April 7, 2017)

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PART 1851
USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1--Contractor Use of Government Supply Sources

1851.102 Authorization to use Government supply sources.

(e) The contracting officer shall use the agency-wide Authorization to Use Government Supply Sources template for letters authorizing contractor use of Government supply sources.

[PN 23-15]

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.202 Authorization.

(a) In accordance with NPR 6200.1, "NASA Transportation and General Traffic Management", the contracting officer shall confirm that the procurement request initiator has received concurrence from the Center Transportation Officer/Traffic Manager before authorizing a contractor to obtain Government-owned or -leased vehicles and related services.

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.

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SUBPART 1852.3 PROVISION AND CLAUSE MATRIX
1852.300 Scope of subpart
1852.301 Solicitation Provisions and Contract Clauses (Matrix)

PART 1852
SOLICITATION PROVISIONS AND CONTRACT CLAUSES
(*Revised August 25, 2017*)

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).

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using Part 52.

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of Subpart 1801.3 are met.

(e)(1) The NFS matrix in Subpart 1852.3 is formatted similarly to that in the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses.

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b)(i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, AFRC, GRC, GSFC, JSC, KSC, LARC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from -90 to -199. For example, the first Johnson Space Center (JSC) provision or clause relating to Part 36 of the FAR or NFS shall be JSC 52.236-90, the second JSC 52.236-91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

(A) *I.2 BID ENVELOPES (GSFC 52.214-90) (AUGUST 1987).* This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number ("I.2") designates the UCF section and the sequential clause within that section. "GSFC 52.214-90" specifies the clause number.

(B) *GSFC 52.214-90--Bid Envelopes (AUGUST 1987).* This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(c) Contracting officers shall not number provisions and clauses developed for individual acquisitions only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

1852.103-70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

"52.232-28 Electronic Funds Transfer Payment Methods (APR 1989)--as modified by NASA FAR Supplement 1832.908(a)"

1852.104 Procedures for modifying and completing provisions and clauses.

NFS provisions and clauses shall not be modified unless authorized by the NFS. When authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1852.2—Text 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.

(End of clause)

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
(JUL 2023)

(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. 4701, 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)

[PN 23-12]

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)

See PCD 21-01B for clause deviation to 1852.204-76.

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 Contractor 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)

1852.208-81 Restrictions on Printing and Duplicating.
As prescribed in 1808.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING
(NOV 2004)

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101-9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10-3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 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)

1852.209-71 Limitation of Future Contracting.
As prescribed in 1809.507-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507-2:

LIMITATION OF FUTURE CONTRACTING
(DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

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)

See PCD 20-2B for clause deviation to 1852.213-70.

1852.213-70 Offeror Representations and Certifications–Other Than Commercial Products and Commercial Services.

As prescribed in 1813.302-570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES
(OCT 2023)

(a) *Definitions.* As used in this provision--

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

"Service-disabled veteran-owned small business concern" —

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service- disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

"Veteran-owned small business concern" means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN).*

[ ] TIN: _____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049-4;

[ ] Other _____.

(5) *Common parent.*

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

TIN _____.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.* [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

NUMBER OF EMPLOYEES	AVERAGE ANNUAL GROSS REVENUES
___ 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.	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 FTA 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":

FTA Country or Israeli End Products:

LINE ITEM NO.	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--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.	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.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or FTA country end products.

Other End Products:

LINE ITEM NO.	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	Listed Countries of Origin
_____	_____
_____	_____
_____	_____

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

ALTERNATE I
(MAR 2004)

As prescribed in 1813.302-570(a)(2)(i), add the following paragraph to the end of the basic provision and identify appropriately:

( ) *Recovered Material Certification* . As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

ALTERNATE II
(MAR 2004)

As prescribed in 1813.302-570(a)(2)(ii), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College or University and Minority Institution Representation

(1) *Definitions.* As used in this provision—

"Historically black college or university" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institution" means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) *Representation.* The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

ALTERNATE III
(MAR 2004)

As prescribed in 1813.302-570(a)(2)(iii), add the following paragraph to the end of the basic provision and identify appropriately:

( ) *Representation Of Limited Rights Data And Restricted Computer Software.*

(1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at FAR 52.227-16, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at FAR 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at FAR 52.227-14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data-General."

1852.213-71 Evaluation--Other Than Commercial Products and Services.
As prescribed in 1813.302-570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES
(OCT 2023)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

_____
_____
_____

Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).

(b) *Options*. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[PN 23-16]

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)

1852.214-71 Grouping for Aggregate Award.
As prescribed in 1814.201-670(b), insert the following provision:

GROUPING FOR AGGREGATE AWARD
(MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items
[Insert the item numbers and/or descriptions].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

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)

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)

1852.215-78 Make or Buy Program Requirements.
As prescribed in 1815.408-70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS
(FEB 1998)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.407-2. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

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)

[PN 18-11]

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.

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 a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 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 and counted against that section's page limitation.

(d) If final 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)

1852.215-84 Ombudsman.
As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN
(NOV 2023)

(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 e-mail address may be found at: https://www.hq.nasa.gov/office/procurement/regs/Procurement-Ombuds-Comp-Advocate-Listing.pdf. 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 solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

[PN 23-21]

1852.215-85 Proposal Adequacy Checklist.
As prescribed in 1815.408-70(c), use the following provision:

PROPOSAL ADEQUACY CHECKLIST
(OCT 2023)

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)
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; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs.		
5.	FAR 15.408, Table 15-2, Section I Paragraph B	Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?		
6.	FAR 15.403-1(b)	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.)		
7.	FAR 15.408, Table 15-2, Section I Paragraph C(2)(i)	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?		
8.	FAR 15.408, Table 15-2, Section I Paragraph C(2)(ii)	Does the proposal disclose the nature and amount of any contingencies included in the proposed price?		
9.	FAR 15.408 Table 15-2, Section II, Paragraph A or B	Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis?		

10.	FAR 15.408, Table 15-2, Section I Paragraphs D and E	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.)		
11.	FAR 15.408, Table 15-2, Section I Paragraphs D and E	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?		
12.	FAR 15.408, Table 15-2, Section I Paragraph F	Does the proposal identify any incurred costs for work performed before the submission of the proposal?		
13.	FAR 15.408, Table 15-2, Section I Paragraph G	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?		
COST ELEMENTS				
MATERIALS AND SERVICES				
14.	FAR 15.408, Table 15-2, Section II Paragraph A	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.		
SUBCONTRACTS (Purchased materials or services)				
15.	FAR 15.404-3(c) FAR 52.244-2	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?		
16.	FAR 15.408, Table 15-2, Note 1; Section II Paragraph A	Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? 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?		
EXCEPTIONS TO CERTIFIED COST OR PRICING DATA				
17.	FAR 52.215-20 FAR 2.101, "commercial product and commercial service"	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial products and commercial services 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 product and commercial service), and the basis on which the item meets the definition? b. For modified commercial product and commercial service		

		(FAR 2.101 commercial product and service definition did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace; or ii. A minor modification 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 product and commercial service "of a type", or "evolved" or modified (FAR 2.101 commercial product and commercial service definition, 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?		
INTERORGANIZATIONAL TRANSFERS				
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?		
DIRECT LABOR				
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?		
INDIRECT COSTS				
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.)		
OTHER COSTS				
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/FPRP and show the calculation of the proposed amount?		
FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES				
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?		
OTHER				
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	If Economic Price Adjustments are being proposed, does the proposal		

	15.408 Table 15-2, Section II, Paragraphs A, B, C, and D	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)

[PN 23-16]

1852.216-72 Award term.
As prescribed in 1816.406-70(g), insert the following clause:

AWARD TERM
(AUG 2017)

(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 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 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)

1852.216-73 Estimated Cost and Cost Sharing.
As prescribed in 1816.307-70(a), insert the following clause:

ESTIMATED COST AND COST SHARING
(DEC 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $ _____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than ___percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as $____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

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)

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)

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)

[PN 18-11]

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 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)

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)

1852.216-80 Task Ordering Procedure.
As prescribed in 1816.506-70, insert the following clause:

TASK ORDERING PROCEDURE
(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 data:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgment 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 were 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.
(6) Cost summary of the status of all task orders issued under the contract.
(7) Invoice number.

[PN 18-07]

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.

[PN 18-07]

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)

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)

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)

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 1816.406-70(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)

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 performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) *Standard performance level.* At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for **(1)**_ is established as follows: **(2)**_

(c**)** *Positive incentive.* The Contractor earns a separate positive incentive amount for each 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:

(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)

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)

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
(JUL 2023)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112-239), notwithstanding FAR 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. 4701, 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. 4701 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 4701.

(End of clause)

[PN 23-12]

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 synopsized 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 contractors. This demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [*insert the specific Phase 1 deliverables*]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.
[*Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements*.]

(h) Although NASA will request Phase 2 proposals from Phase 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)

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 synopsized 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 all the material furnished to the Phase 1 contractors 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)

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 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)

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.

(End of clause)

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)

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 (l) (1), the contractor shall enter goals as a percentage of total contract value as well as a percentage of total subcontract dollars.

(End of clause)

1852.219-77 NASA Mentor-Protégé Program.
As prescribed in 1819.7215, insert the following clause:

NASA MENTOR-PROTEGE PROGRAM
(OCT 2023)

(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.

(b) The Program consists of—

(1) Mentors, which are large businesses prime or research institution with at least one approved NASA subcontracting plan;

(2) Protégés, which qualify as one or more of the following:

(i) Small Business Concern, as defined in FAR part 2, Definitions of Parts and Terms, including: Women-Owned or Economically-Owned Concern; Veteran-Owned or Service-Disabled Veteran-Owned Small Business Concern; Historically Underutilized BusinessZone Concern;

(ii) Historically Black College and University or Minority-Serving Institution;

(iii) Current NASA SBIR/STTR Phase II Company; or

(iv) An entity participating in the AbilityOne Program;

(3) MPA endorsed by the cognizant NASA centers and approved by the NASA MPPO; and

(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 1819.7205.

(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, as well as other Federal and commercial contracts and subcontracts.

(d) Eligible businesses and research institutions interested in participating in the program are encouraged to contact the NASA MPPO.

(End of clause)

[PN 23-20]

1852.219-79 Mentor Requirements and Evaluation.
As prescribed in 1819.7215, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION
(OCT 2023)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to:

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

(2) Increase the overall participation of protégé's 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 protégé's and mentors.

(b) The Mentor shall comply with the annual reporting requirements detailed in NASA FAR Supplement 1819.7212.

(c) NASA will evaluate the Mentor's performance on the following factors in the subcontracting element of the annual Contractor Performance Assessment Report (CPAR). If this contract includes an award fee incentive, this evaluation will also be included as part of the subcontracting element in the award fee evaluation process.

(3) The extent to which the mentor and protégé´ have met the developmental milestones outlined in the agreement; and

(4) The extent to which the mentor has contributed to advancing the protégé's technical readiness level. This factor only applies if the protégé is a current NASA SBIR/STTR Phase II contractor.

(d) Annual reports shall be submitted by the Mentor and the Protégé to the MPPO, following the annual report template found on the website at www.nasa.gov/osbp.

(1) Except for as noted in paragraph (d)(4) of this section, the Mentor may include its developmental expenditures from the annual report, reference 1819.7212, Reporting Requirements, in its reported dollars in its Summary Subcontracting Report (SSR) in eSRS.

(2) If the protégé´ is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the Mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socioeconomic subcategory on the SSR and ISR for which the protégé qualifies.

(3) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the ''Remarks'' section of each report.

(4) Expenditures for AbilityOne protégé's cannot be included in SSR's or ISR's, since there is no such reporting category for SSR's or ISR's.

(e) 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 prote´ge´'s notice to withdraw from the Program.

(f) Every six months, the Mentor and Protégé´, as appropriate, will formally brief the MPPO, and the contracting officer during a formal program review regarding program accomplishments, as it pertains to the approved agreement.

(g) NASA may terminate MPA for good cause, thereby excluding mentors or protégé's from participating in the program. These actions shall be approved by the MPPO. 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.

(End of clause)

[PN 23-20]

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)

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)

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)

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)

1852.219-84 Limitation of the Principal Investigator – STTR Program.
As prescribed in 1819.7302(e), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR – STTR PROGRAM
(OCT 2006)

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (insert name).

(End of clause)

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 USC, Section 287, False Claims.

(End of clause)

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 any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may—

(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)

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 for use of radio frequencies required in support of this contract following the procedures in NPR, 2570.1, NASA Radio Frequency (RF) Spectrum Management Manual.

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

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

(End of clause)

1852.223-72 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)

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.

(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 provision)

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.

1852.223-74 Drug- and alcohol-free workforce.
As prescribed in 1823.570-2, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE
(OCT 2023)

(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 preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) In determining which positions to designate as "sensitive," the contractor may use NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, on "Testing Designated Positions" (TDPs) for Federal employees, 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 clause 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 of 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 products and services (see FAR Parts **2** and **12**).

(End of clause)

[PN 23-16]

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 shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

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.

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 interagency 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)

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)

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 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 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 authorize 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.

See PCD 12-01A for Clause Deviation 1852.225-71 and 1852.225-72.

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 period as the Contracting Officer may specify) from the date of the contract, listing all subject inventions required to be disclosed during the period or certifying that there were none.

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

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

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

(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)

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.

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(End of Notice)

(End of addition)

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

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(End of Notice)

(End of addition)

(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)

1852.227-17 Reserved.

[PN 18-13]

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)

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.

"Contract" has the meaning provided in the Federal Acquisition Regulation (FAR), Subpart 2.1-Definitions.

"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 1245, Subpart 1, the Contractor may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any invention or class of inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

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

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

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

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

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention in which the Government has title and in any resulting patent, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404, Licensing of Government Owned Inventions. The Contractor's license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revoking or modifying the Contractor's license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Contractor's obligations.

(1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology-Other than a Small Business Firm or Nonprofit Organization clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose in writing each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology-Other than a Small Business Firm or Nonprofit Organization clause or within six months after the Contractor becomes aware that a reportable item has been made, whichever is earlier, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall identify the inventor(s) or innovator(s) and this contract under which the reportable item was made. It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, sale or offer for sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the

agency of the acceptance of any manuscript describing a subject invention for publication or of any sale, offer for sale, or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (including computer software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site http://invention.nasa.gov.

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim new technology summary reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions).

(ii) A final new technology summary report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to paragraph 27.302(j) of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contracting Officer may require the Contractor to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim new technology summary reports pursuant to paragraph (e)(4)(i) of this clause or a final new technology summary report pursuant to (e) (4) (ii); 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 subparagraph (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)

1852.227-71 Requests for Waiver of Rights to Inventions.

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

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS
(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.

(End of provision)

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 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)

1852.227-84 Patent Rights Clauses.
As prescribed in 1827.303(a)(1), the contracting officer shall insert the following provision in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization:

PATENT RIGHTS CLAUSES
(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)

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, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that foreign country for each such invention. Where Contractor does not elect to file such patent application for any such invention in that foreign country, full right, title and interest in and to such invention in that foreign country shall reside in the Government of the

United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, the 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)

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 subparagraphs (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)

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 attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of the GFCS and related technical data by the Contractor, a subcontractor, or by any person to whom the Contractor has released or disclosed such GFCS or related technical data.

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

(End of clause)

1852.228-70 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 nonconventional 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 hangers, 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 incident 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 required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) *"Contractor's managerial personnel"* means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made

to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government- furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or

damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of–

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either (i) require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

1852.228-71 Aircraft Flight Risks.

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- Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance--Liability to Third Persons clause), the Contractor shall not (1) be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily

injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause--

(1) Unless otherwise specifically provided in the Schedule, *"aircraft"* includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) *"Flight"* includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to sea-planes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) *"Flight crew members"* means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made (i) in the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

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 Part 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)

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 Part 1266.104.

(2) "*Damage*" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) "*Launch Vehicle*" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

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

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

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

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

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

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

(7) "Related entity" means:

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

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

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

The terms "contractors" and "subcontractors" include suppliers of any kind.

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

(c) Cross-waiver of liability:

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against—

(i) A Party;

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

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

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

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

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

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

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

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

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

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

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

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

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

1852.228-80 Insurance — Immunity From Tort Liability.

As prescribed in 1828.311-270(b), insert the following provision:

INSURANCE — IMMUNITY FROM TORT LIABILITY
(SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect.

When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is *partially* immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance — Liability To Third Persons, and the associated NFS clause 1852.228-81, Insurance — Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is *totally* immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82, Insurance — Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

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 persons 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)

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)

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)

1852.231-71 Determination of Compensation Reasonableness.
As prescribed at 1831.205-671, insert the following provision. See PCD 23-02 for guidance.

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)

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
(APR 2015)

(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 31of 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)

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

(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 estimate 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) of this clause. 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 preparatory costs will not be made by the Government.

(End of clause)

1852.232-80 Submission of Vouchers/Invoices 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 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 requests. 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/invoices 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)

[PN 18-07]

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)

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:

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, D.C. 20546-0001.

(End of provision)

See PCD 15-05 for clause deviation to 1852.234-1.

1852.234-1 Notice of Earned Value Management System.
As prescribed in 1834.203-70(a), insert the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM
(APR 2015)

(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

(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/adl/en-US/737198/file/81212/EVMIG_Oct2006.pdf) as well as in the National Defense Industrial Association (NDIA) Earned Value Management Systems Acceptance Guide (http://www.ndia.org/Divisions/Divisions/IPMD/Documents/ComplementsANSI/EVMS_Accept

_Guide_Approval_Release_November_2006.pdf).

(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)

See PCD 15-05 for clause deviation to 1852.234-2.

1852.234-2 Earned Value Management System.
As prescribed in 1834.203-70(b) insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM
(APR 2015)

(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 contactor'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).

_____

_____

_____

_____

(2) For subcontracts with an estimated dollar value of less than $50M, the following subcontractors shall comply with the requirements of this clause except for the requirement in paragraph (b), if applicable, to obtain compliance/validation.

(Contracting Officer to insert names of subcontractors or subcontracted effort.)

_____

_____

_____

_____

(g) If the contractor identifies a need to deviate from the agreed baseline by working against an Over Target Baseline (OTB) or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer a request for approval to begin implementation of an OTB or OTS. This request shall include a top-level projection of cost and/or schedule growth, whether or not performance variances will be retained, and a schedule of implementation for the reprogramming adjustment. The Government will approve or deny the request within 30 calendar days after receipt of the request. Failure of the Government to respond within this 30-day period constitutes approval of the request. Approval of the deviation request does not constitute a change, or the basis for a change, to the negotiated cost or price of this contract, or the estimated cost of any undefinitized contract actions.

(End of clause)

(ALTERNATE I)
(NOV 2006)

As prescribed in 1834.203-70(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA-748 Standard (current version at the time of ward), 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.

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)

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, nonprofit, educational, small business, minority, women-owned, etc.

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) *Restriction on Use and Disclosure of Proposal Information.* Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Notice - Restriction on Use and Disclosure of Proposal Information

The information (data) contained in [insert page numbers or other identification] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(3) *Abstract.* Include a concise (200-300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) *Project Description.*

(i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) *Management Approach.* For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described.

(6) *Personnel.* The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) *Facilities and Equipment.*

(i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

(8) *Proposed Costs (U.S. Proposals Only).*

(i) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering

professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831.

(iv) Use of NASA funds--NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(9) *Security.* Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) *Current Support.* For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) *Special Matters.*

(i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Identify and discuss risk factors and issues throughout the proposal where they are relevant, and your approach to managing these risks.

(iii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) *Renewal Proposals.*

(1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) *Length.* Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15-20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments.

(f) *Joint Proposals.*

(1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) *Late Proposals.* Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.-

(h) *Withdrawal.* Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) *Evaluation Factors*.

(1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) *Evaluation Techniques.* Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) *Selection for Award.*

(1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) *Additional Guidelines Applicable to Foreign Proposals and Proposals Including Foreign Participation.*

(1) NASA welcomes proposals from outside the U.S. However, foreign entities are generally not eligible for funding from NASA. Therefore, unless otherwise noted in the NRA, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included. Proposals from foreign entities and proposals from U.S. entities that include foreign participation must be endorsed by the respective government agency or funding/sponsoring institution in the country from which the foreign entity is proposing. Such endorsement should indicate that the proposal merits careful consideration by NASA, and if the proposal is selected, sufficient funds will be made available to undertake the activity as proposed.

(2) All foreign proposals must be typewritten 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.

(End of provision)

1852.235-73 Final Scientific and Technical Reports.
As prescribed in 1835.070(d) insert the following clause:

FINAL SCIENTIFIC AND TECHNICAL REPORTS
(DEC 2006)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPR 2200.2, 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 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. 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.

(End of clause)

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.

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)

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)

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)

1852.236-73 Hurricane Plan.
As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN
(DEC 1988)

In the event of a hurricane warning, the Contractor shall–

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

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)

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 throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

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)

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)

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)

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 safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

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)

1852.241-70 Reserved.

1852.242-70 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)

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)

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 Contracting 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 occur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

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)

1852.243-70 Reserved.

1852.243-71 Reserved.

[PN 18-12]

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 percent
To first tier subcontractor on work performed by its subcontractors	-----	-----	10 percent
To Contractor and/or subcontractors on work performed with their own forces	10 percent	10 percent	-----

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

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)

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.

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 recordkeeping, 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 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)

[PN 18-11]

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.

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 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)

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 Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of clause)

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.

(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)

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)

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 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. Under FAR 52.245–1, the Contractor is accountable for the identified property.

(End of clause)

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 no charge-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)

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)

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)

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.

(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, 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.

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)

1852.245–82 Occupancy Management Requirements.
As prescribed in 1845.107–70(m), insert the following clause:

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) NPR 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)

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 Estate Management.
(2) NPR 8831.2, Facilities Maintenance and Operations 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)

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

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed.]

(End of clause)

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 forms 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)

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.

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)

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.
(OCT 2023)

(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, 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 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 products and services 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 part or end items, components, or assemblies containing a counterfeit electronic part.

(End of clause)

[PN 20-08, PN 23-16]

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)

[PN 18-11]

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)

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-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.
(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____[Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by

telephone: _____[Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(i) Item identification/ description.
(ii) Origin and destination.
(iii) Individual and total weights.
(iv) Dimensional Weight.
(v) Dimensions and total cubic footage.
(vi) Total number of pieces.
(vii) Total dollar value.
(viii) Other pertinent data.

(End of clause)

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.

1852.301 Solicitation Provisions and Contract Clauses (Matrix).

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

Key:

P or C	Provision or Clause	FP SUP	Fixed-Price Supply	CR CON	Cost-Reimbursement Construction
*	* indicates the clause flows-down to subcontracts	CR SUP	Cost-Reimbursement Supply	T&M LH	Time & Material/Labor Hour
UCF	Uniform Contract Format Section	FP R&D	Fixed-Price Research and Development	A&E	Architect-Engineering
IBR or FT	Indicates whether the clause may be incorporated by reference (IBR) or must be used in full text (FT).	CR R&D	Cost-Reimbursement Research and Development	ID DEL	Indefinite Delivery
Fill-in	"X" indicates the clause requires text to be filled-in by the CO.	FP SVC	Fixed-Price Service	TRN	Transportation
Mod or Sub	"X" indicates the CO is authorized to make specific modifications to the clause or to use the clause on a "substantially as stated/substantially the same as basis.	CR SVC	Cost-Reimbursement Service	SAP	Simplified Acquisition Procedures
				CI	Commercial Item
App Dev	"X" indicates the clause has an approved deviation. The PCD authorizing the deviation is listed.	FP CON	Fixed-Price Construction	Clause application	R = Required A = Required-When-Applicable O = Optional

Clause/ Provision Number	Title	Date	Prescribed In	P or C	UCF	IBR or FT	Fill In	Mod or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A&E	ID DEL	TRN	SAP	CI
1852.203-70	Display of Inspector General Hotline Posters	(JUN 2001)	1803.7001	C	I	IBR				A	A	A	A	A	A	A	A	A	A	A	A		
1852.203-71	Requirement to Inform Employees of Whistleblower Rights	(JUL 2023)	1803.970	C	I	IBR				R	R	R	R	R	R	R	R	R	R	R	R	R	
1852.204-75	Security Classification Requirements	(SEP 1989)	1804.404-70	C	I	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	A
1852.204-76	Security Requirements for Unclassified Information Technology Resources	(JAN 2011)	1804.470-4(a)	C*	I	IBR			PCD 21-01B	A	A	A	A	A	A	A	A	A		A	A	A	A
1852.208-81	Restrictions on Printing and Duplicating	(NOV 2004)	1808.870	C*	H	IBR				A	A		A	A	A			A		A	A	A	

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

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Clause/ Provision Number	Title	Date	Prescribed In	P or C	UCF	IBR or FT	Fill In	Mod or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A&E	ID DEL	TRN	SAP	CI
1852.209-71	Limitation of Future Contracting	(DEC 1988)	1809.507-2	C	H	FT	X	X		O	O	O	O	O	O	O	O	O		O	O	O	
1852.209-72	RESERVED																						
1852.211-70	Packaging, Handling, and Transportation	(SEP 2005)	1811.404-70	C	D	IBR				A	A	A	A	A	A			A		A	A	A	
1852.213-70	Offeror Representations and Certifications—Other Than Commercial Products and Services	(OCT 2023)	1813.302-570	P	K	FT	X		PCD 20-02B													O	
1852.213-70	Alternate I	(MAR 2004)	1813.302-570(a)(2)(i)	P	K	FT																A	

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

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P or C	Provision or Clause	FP SUP	Fixed-Price Supply	CR CON	Cost-Reimbursement Construction
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Clause/ Provision Number	Title	Date	Prescribed In	P or C	UCF	IBR or FT	Fill In	Mod or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A&E	ID DEL	TRN	SAP	CI
1852.213-70	Alternate II	(MAR 2004)	1813.302-570(a)(2)(ii)	P	K	FT	X															A	
1852.213-70	Alternate III	(MAR 2004)	1813.302-570(a)(2)(iii)	P	K	FT	X															A	
1852.213-71	Evaluation Other Than Commercial Products and Services	(OCT 2023)	1813.302-570(b)	P	L	FT	X	X														O	
1852.214-70	Caution to Offerors Furnishing Descriptive Literature	(DEC 1988)	1814.201-670(a)	P	L	IBR				A				A		A				A			
1852.214-71	Grouping for Aggregate Award	(MAR 1989)	1814.201-670(b)	P	M	FT	X			A	O			A	O	A		O		A	A		
1852.214-72	Full Quantities	(DEC 1988)	1814.201-670(c)	P	M	IBR				A	O			A	O	A		O		A	A		

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

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1852.215-77	Preproposal/Pre-Bid Conference	(APR 2015)	1815.209-70(a)	P	L	FT	X			A	A	A	A	A	A	A	A	A		A	A		
1852.215-78	Make or Buy Program Requirements	(FEB 1998)	1815.408-70(a)	P	L	IBR				A	A	A	A	A	A			A		A			
1852.215-79	Price Adjustment for "Make-or-Buy" Changes	(JUN 2018)	1815.408-70(b)	C	I	FT	X			A	A	A	A	A	A			A		A			
1852.215-81	Proposal Page Limitations	(APR 2015)	1815.209-70(d),	P	L	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	
1852.215-84	Ombudsman	(NOV 2023)	1815.7003	C	I	IBR				R	R	R	R	R	R	R	R	R		R	R	R	R
1852.215-85	Proposal Adequacy Checklist	(OCT 2023)	1815.408-70(c)	P	L	FT				A	A	A	A	A	A	A	A	A	A	A	A		
1852.216-72	Award Term	(AUG 2017)	1816.406-70(g)	C	I	FT				A		A	A		A			A	A	A			

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

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1852.216-73	Estimated Cost and Cost Sharing	(DEC 1991)	1816.307-70(a)	C	B	FT	X						A										
1852.216-74	Estimated Cost and Fixed Fee	(DEC 1991)	1816.307-70 (b)	C	B	FT	X	X			O		O		O		O						
1852.216-75	Payment of Fixed Fee	(DEC 1988)	1816.307-70 (c)	C	G	IBR					O		O		O		O						
1852.216-76	Award Fee for Service Contracts	(JUN 2018)	1816.406-70 (a)	C	G	FT	X					A	A	A	A			A	A	A			
1852.216-77	Award Fee for End Item Contracts	(AUG 2016)	1816.406-70 (b)	C	G	FT	X	X		A	A	A	A			A	A			A			
1852.216-78	Firm Fixed Price	(DEC 1988)	1816.202-70	C	B	FT	X			A		A		A		A		A					
1852.216-80	Task Ordering Procedure	(OCT 1996)	1816.506-70	C	I	FT	X			A	A	A	A	A	A	A	A	A		A	A		
1852.216-80	Alternate I	(APR 2018)	1816.506-70(a)	C	I	FT				A	A	A	A	A	A	A	A			A	A		A

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1852.216-80	Alternate II	(APR 2018)	1816.506-70(b)	C	I	FT				A		A		A		A				A	A		
1852.216-81	Estimated Cost	(DEC 1988)	1816.307-70(d)	C	B	FT	X				A		A		A		A	A					
1852.216-83	Fixed Price Incentive	(OCT 1996)	1816.406-70(c)	C	B	FT	X	X		O				O		O		O				O	
1852.216-84	Estimated Cost and Incentive Fee	(OCT 1996)	1816.406-70(d)	C	B	FT	X				O		O		O		O						
1852.216-85	Estimated Cost and Award Fee	(SEP 1993)	1816.406-70(e)	C	B	FT	X				O		O		O		O						
1852.216-85	Alternate I	(SEP 1993)	1816.406-70(e)	C	B	FT	X				O		O		O		O						
1852.216-88	Performance Incentive	(APR 2015)	1816.406-70(f)	C	B	FT	X	X			O		O										A
1852.216-89	Assignment and Release Forms	(AUG 2016)	1816.307-70(f)	C	I	IBR					A		A		A		A	A			A	A		

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1852.216-90	Allowability of Legal Costs Incurred in Connection with a Whistleblower Proceeding	(JUL 2023)	1816.307-70(g)	C	I	IBR					A		A		A		A	A	A	A	A	O	
1852.217-71	Phased Acquisition Using Down-Selection Procedures	(APR 2015))	1817.7002(a)	C	I	FT	X	X					A										
1852.217-72	Phased Acquisition Using Progressive Competition Down-Selection Procedures	(NOV 2011)	1817.7002(b)	C	I	FT	X	X					A										
1852.219-11	Special 8(a) Contract Conditions	(APR 2015)	1819.811-3(a)	C	I	FT	X			A	A	A	A	A	A	A	A	A	A	A	A		
1852.219-18	Notification of Competition Limited to Eligible 8(a) Concerns	(APR 2015)	1819.811-3(d)	C	I	FT	X			A	A	A	A	A	A	A	A	A	A	A	A		

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1852.219-73	Small Business Subcontracting Plan	(MAY 1999)	1819.708-70(a)	P	L	FT	X			A	A	A	A	A	A	A	A	A		A	A		A
1852.219-75	Individual Subcontracting Reports	(APR 2015)	1819.708-70(b)	C*	I	IBR				A	A	A	A	A	A	A	A	A		A	A		A
1852.219-77	NASA Mentor-Protégé Program	(OCT 2023)	1819.7215(a)	C	I	IBR				A	A	A	A	A	A	A	A	A		A	A		
1852.219-79	Mentor Requirements and Evaluation	(OCT 2023)	1819.7215(b)	C	I	IBR				A	A	A	A	A	A	A	A	A		A	A		
1852.219-80	Limitation on Subcontracting -- SBIR Phase I Program	(OCT 2006)	1819.7302(a)	C	I	IBR				A	A	A	A	A	A	A	A	A		A	A	A	
1852.219-81	Limitation on Subcontracting -- SBIR Phase II Program	(OCT 2006)	1819.7302(b)	C	I	IBR				A	A	A	A	A	A	A	A	A		A	A	A	

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1852.219-82	Limitation on Subcontracting -- STTR Program	(OCT 2006)	1819.7302(c)	C	I	IBR				A	A	A	A	A	A	A	A	A		A	A	A	
1852.219-83	Limitation of the Principal Investigator -- SBIR Program	(OCT 2006)	1819.7302(d)	C	I	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	
1852.219-84	Limitation of the Principal Investigator -- STTR Program	(OCT 2006)	1819.7302(e)	C	I	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	
1852.219-85	Conditions for Final Payment --SBIR and STTR Contracts	(OCT 2006)	1819.7302 (f)	C	I	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	
1852.223-70	Safety and Health Measures and Mishap Reporting.	(DEC 2015)	1823.7001(a)	C*	H	IBR					A	A	A	A	A	A	A	A	A	A	A	A	A
1852.223-71	Authorization for Radio Frequency Use	(APR 2015)	1823.7101	C*	G	IBR				A	A	A	A	A	A	A	A	A	A	A	A	A	A

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1852.223-72	Safety and Health (Short Form)	(JUL 2015)	1823.7001(f)	C	H	IBR				A	A	A	A	A	A	A	A	A	A	A	A	A	A
1852.223-73	Safety and Health Plan	(JUL 2015)	1823.7001(c)	P	L	IBR		X		A	A	A	A	A	A	A	A	A	A	A	A	A	A
1852.223-73	Alternate I	(JUL 2015)	1823.7001(c)	P	L	IBR		X		A	A		A	A	A	A	A	A	A	A	A	A	
1852.223-74	Drug- and Alcohol-Free Workforce	(OCT 2023)	1823.570-2	C*	I	IBR				A	A		A	A	A	A	A	A	A	A	A		
1852.223-75	Major Breach of Safety or Security	(FEB 2002)	1823.7001(e)(1)	C	H	IBR				A	A	A	A	A	A	A	A	A		A	A	A	
1852.223-75	Alternate I	(FEB 2006)	1823.7001(e)(2)	C	H	IBR				A	A		A	A	A	A	A	A		A	A	A	A
1852.223-76	Federal Automotive Statistical Tool Reporting	(JUL 2003)	1823.271 and 1851.205	C	H	IBR							A	A				A			A		

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1852.225-8	Duty-Free Entry of Space Articles	(FEB 2000) modifies FAR clause	1825.1101(e)	C	I	FT	X			A	A	A	A	A	A	A		A		A		A	
1852.225-70	Export Licenses	(FEB 2000)	1825.1103-70(b)	C	H	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	A
1852.225-70	Alternate I	(FEB 2000)	1825.1103-70(b)	C	H	FT				A	A	A	A	A	A	A	A	A		A	A	A	A
1852.225-71 (Deviation)	Restriction on Funding Activity with China	(FEB 2012) (Deviation)	PCD 12-01A	C*	I	FT			PCD 12-01A	R	R	R	R	R	R	R	R	R	R	R	R	R	
1852.225-72 (Deviation)	Restriction on funding Activity with China – Representation	(FEB 2012) (Deviation)	PCD 12-01A	P	K	FT			PCD 12-01A	R	R	R	R	R	R	R	R	R	R	R	R	R	
1852.227-11	Patent Rights--Ownership by the Contractor	(APR 2015) modifies FAR clause	1827.303(b)(1)	C*	I	IBR						A	A	A	A	A	A	A				A	

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1852.227-14	Rights in Data--General	(APR 2015) modifies FAR clause	1827.409(b)(1)	C	I	IBR				A	A	A	A	A	A			A		A	A	A	
1852.227-17	RESERVED																						
1852.227-19	Commercial Computer Software--Restricted Rights.	(JUL 1997) modifies FAR clause	1827.409(k)(i) and (ii)	C	I	IBR				A				A								A	
1852.227-70	New Technology-Other than a Small Business Firm or Nonprofit Organization	(APR 2015)	1827.303(d)(1)	C*	G	IBR						A	A	A	A	A	A	A				A	
1852.227-71	Requests for Waiver of Rights to Inventions	(APR 2015)	1827.303(d)(2)	P	L	IBR						A	A	A	A	A	A	A				A	
1852.227-72	Designation of New Technology	(APR 2015)	1827.303(d)(3)	C*	G	IBR						A	A	A	A	A	A	A				A	

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	Representative and Patent Representative																						
1852.227-84	Patent Rights Clauses	(APR 2015)	1827.303(a)(1)	P	L	IBR						A	A	A	A	A	A	A				A	
1852.227-85	Invention Reporting and Rights--Foreign	(APR 2015)	1827.303(e)(1)	C*	G	IBR							A	A	A	A	A	A				A	
1852.227-86	Commercial Computer Software--Licensing	(APR 2015)	1827.409(g)	C	G	IBR				A	A	A	A	A	A	A	A	A		A		A	
1852.227-88	Government-furnished Computer Software	(APR 2015)	1827.409(m)(1) and (2)	C	I	IBR				A	A	A	A	A	A	A	A	A	A	A	A	A	

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	and Related Technical Data.																						
1852.228-70	Aircraft Ground and Flight Risk	(OCT 1996)	1828.370(a)	C*	H	IBR		X		A		A		A				A		A	A	A	
1852.228-71	Aircraft Flight Risks	(DEC 1988)	1828.311-270(a)	C	H	IBR					A		A		A			A		A	A	A	
1852.228-75	Minimum Insurance Coverage	(OCT 1988)	1828.372	C	I	IBR		X		O	O	O	O	O	O	O	O	O		O	O	O	
1852.228-76	Cross-Waiver of Liability for International Space Station Activities	(OCT 2012)	1828.371(c) and (d)	C*	H	IBR				A	A	A	A	A	A	A	A	A		A	A		A

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

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1852.228-78	Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to International Space Station	(OCT 2012)	1828.371(b) and (d)	C*	H	IBR				A	A	A	A	A	A	A	A	A		A	A		A
1852.228-80	Insurance--Immunity from Tort Liability	(SEP 2000)	1828.311-270(b)	P	L	IBR							R										
1852.228-81	Insurance--Partial Immunity From Tort Liability	(SEP 2000)	1828.311-270(c)	C	I	IBR							A										
1852.228-82	Insurance--Total Immunity From Tort Liability	(SEP 2000)	1828.311-270(d)	C	I	IBR							A										
1852.231-70	Precontract Costs	(JUN 1995)	1831.205-70	C	I	FT	X				A		A		A		A	A		A	A	A	

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1852.231-71	Determination of Compensation Reasonableness	(APR 2015)	PCD 23-02	P	L	FT		X	PCD 23-02			A		A	A								
1852.232-70	NASA Modification of FAR 52.232-12	(APR 2015)	1832.412-70	C	I	FT	X			A	A	A	A	A	A	A	A	A		A	A	A	
1852.232-77	Limitation of Funds (Fixed Price Contract)	(MAR 1989)	1832.705-270(a)	C	H	FT	X	X		A		A		A		A							
1852.232-79	Payment for On-Site Preparatory Costs	(SEP 1987)	1832.111-70	C	I	IBR										A							
1852.232-80	Submission of Vouchers/Invoices for Payment	(APR 2018)	1832.908-70	C	G	FT				R	R	R	R	R	R	R	R	R	R	A	R	A	
1852.232-81	Contract Funding	(JUNE 1990)	1832.705-270(b)	C	B	FT	X	X			A		A		A		A			A	A		

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1852.232-82	Submission of Requests for Progress Payments	(MAR 1989)	1832.502-470	C	G	FT		X		O		O		O		O		O		O	O		
1852.233-70	Protest to NASA	(DEC 2015)	1833.106-70	P	L	IBR				R	R	R	R	R	R	R	R	R		R	R	A	
1852.234-1 (Deviation)	Notice of Earned Value Management System	(NOV 2015) (Deviation)	PCD 15-05	P	L	FT			PCD 15-05	A	A	A	A	A	A	A	A	A					
1852.234-2 (Deviation)	Earned Value Management System	(NOV 2015) (Deviation)	PCD 15-05	C	I	FT			PCD 15-05	A	A	A	A	A	A	A	A	A					
1852.234-2	Alternate I	(NOV 2006)	PCD 15-05	C	I	IBR			PCD 15-05	A	A	A	A	A	A	A	A	A					
1852.235-70	Center for Aerospace Information	(DEC 2006)	1835.070(a)	C	I	IBR					A	R	R					A				A	
1852.235-71	Key Personnel and Facilities	(MAR 1989)	1835.070(b)	C	H	FT	X					A	A	A	A			A					

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1852.235-72	Instructions for Responding to NASA Research Announcements	(JUL 2016)	1835.070(c)	P	L	IBR							A	A	A	A	A	A				O	
1852.235-73	Final Scientific and Technical Reports	(DEC 2006)	1835.070(d)	C	H	IBR					A	R	R									A	
1852.235-73	Alternate I	(FEB 2003)	1835.070(d)(1)	C	H	IBR					A	A	A									A	
1852.235-73	Alternate II	(DEC 2005)	1835.070(d)(2)	C	H	IBR					A	A	A									A	
1852.235-73	Alternate III	(JAN 2005)	1835.070(d)(3)	C	H	IBR						A											
1852.235-74	Additional Reports of Work--Research and Development	(FEB 2003)	1835.070(e)	C	H	FT	X	X			A	A	A									A	

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1852.236-71	Additive or Deductive Items	(MAR 1989)	1836.570(a)	P	L	IBR										A							
1852.236-72	Bids With Unit Prices	(MAR 1989)	1836.570(b)	P	L	IBR										A							
1852.236-73	Hurricane Plan	(DEC 1988)	1836.570(c)	C	I	IBR										A	A						
1852.236-74	Magnitude of Requirement	(DEC 1988)	1836.570(d)	P	L	FT	X									A	A					A	
1852.236-75	Partnering for Construction Contracts	(AUG 1998)	1836.7004	C	H	FT		X								O	O						
1852.237-70	Emergency Evacuation Procedures	(DEC 1988)	1837.110-70(a)	C	I	IBR						A	A	A	A	A	A	A			A		A
1852.237-71	Pension Portability	(JAN 1997)	1837.110-70(b)	C*	I	IBR								A	A								
1852.237-72	Access to Sensitive Information	(JUN 2005)	1837.203-72(a)	C	I	IBR						A	A	A	A					A		A	A

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1852.237-73	Release of Sensitive Information	(JUN 2005)	1837.203-72(b)	C	I	IBR				R	R	R	R	R	R	R	R	R	R	R	R	R	R
1852.239-70	Alternate Delivery Points	(NOV 1993)	1839.107-70(a)(1)	C	F	FT	X	X		A	A			A	A					A			
1852.239-70	Alternate I	(NOV 1993)	1839.107-70(a)(2)	C	F	FT	X			A	A			A	A					A			
1852.242-71	Travel Outside of the United States	(DEC 1988)	1842.7002	C	G	IBR							A		A		A	A		A	A		
1852.242-72	Denied Access to NASA Facilities	(OCT 2015)	1842.7001	C	H	IBR				A	A	A	A	A	A	A	A	A		A	A	A	
1852.242-73	NASA Contractor Financial Management Reporting	(NOV 2004)	1842.7202	C*	G	IBR				A	R	A	R	A	R	A	R	R		A	R		

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1852.242-78	Emergency Medical Services and Evacuation	(APR 2001)	1842.7003	C	I	IBR				A	A	A	A	A	A	A	A	A		A	A	A	
1852.243-70	RESERVED																						
1852.243-71	RESERVED																						
1852.243-72	Equitable Adjustments	(APR 1998)	1843.205-70	C	H	IBR		X								O							
1852.244-70	Geographic Participation in the Aerospace Program	(APR 1985)	1844.204-70	C*	H	IBR						A	A										
1852.245-70	Contractor Requests for Government-furnished Property	(AUG 2015)	1845.107–70 (a)(1)	C	G	IBR					A		A		A		A	A					
1852.245-70	Alternate I	(AUG 2015)	1845.107–70 (a)(2)	C	G	IBR					A		A		A		A	A					

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1852.245-71	Installation—Accountable Government Property	(JUN 2018)	1845.107-70(b)(1)	C	G	FT	X			A	A	A	A	A	A	A	A	A	A				
1852.245-71	Alternate I	(JAN 2011)	1845.107-70 (b)(4)	C	G	FT				A	A	A	A	A	A	A	A	A	A				
1852.245-72	Liability for Government Property Furnished for Repair or Other Services	(JAN 2011)	1845.107-70 (c)	C	I	IBR								A				A				A	
1852.245-73	Financial Reporting of NASA Property in the Custody of Contractors	(JAN 2017)	1845.107-70(d)	C	G	FT	X			A	A	A	A	A	A	A	A	A	A	A		A	
1852.245-74	Identification and Marking of Government Equipment	(JAN 2011)	1845.107-70 (e)	C	D	FT	X			A	A		A	A	A	A	A	A				A	

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1852.245-75	Property Management Changes	(JAN 2011)	1845.107-70 (f)	C	G	IBR				A	A	A	A	A	A	A	A	A	A			A	
1852.245-76	List of Government Property Furnished Pursuant to FAR 52.245–1	(JAN 2011)	1845.107-70 (g)	C	G	FT	X			A	A	A	A	A	A	A	A	A	A			A	
1852.245-77	List of Government Property Furnished Pursuant to FAR 52.245–2	(JAN 2011)	1845.107-70 (h)	C	G	FT	X			A	A	A	A	A	A	A	A	A	A			A	
1852.245-78	Physical Inventory of Capital Personal Property	(AUG 2015)	1845.107-70(i)	C	G	IBR				A	A	A	A	A	A	A	A	A				A	

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1852.245-79	Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value	(JAN 2011)	1845.107-70(j)	C	G	IBR				A	A	A	A	A	A			A	A			A	
1852.245-80	Government Property Management Information	(JAN 2011)	1845.107-70(k)(1)	P	L	FT	X			A	A	A	A	A	A	A	A	A	A			A	
1852.245-80	Alternate I	(JAN 2011)	1845.107-70(k)(2)	P	L	FT				A	A	A	A	A	A	A	A	A	A			A	
1852.245-81	List of Available Government Property	(JAN 2011)	1845.107-70(l)	P	L	FT	X			A	A	A	A	A	A	A	A	A	A			A	
1852.245-82	Occupancy Management Requirements	(SEP 2017)	1845.107-70(m)	C	G	FT	X			A	A	A	A	A	A	A	A	A	A			A	

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

Key:

P or C	Provision or Clause	FP SUP	Fixed-Price Supply	CR CON	Cost-Reimbursement Construction
*	* indicates the clause flows-down to subcontracts	CR SUP	Cost-Reimbursement Supply	T&M LH	Time & Material/Labor Hour
UCF	Uniform Contract Format Section	FP R&D	Fixed-Price Research and Development	A&E	Architect-Engineering
IBR or FT	Indicates whether the clause may be incorporated by reference (IBR) or must be used in full text (FT).	CR R&D	Cost-Reimbursement Research and Development	ID DEL	Indefinite Delivery
Fill-in	"X" indicates the clause requires text to be filled-in by the CO.	FP SVC	Fixed-Price Service	TRN	Transportation
Mod or Sub	"X" indicates the CO is authorized to make specific modifications to the clause or to use the clause on a "substantially as stated/substantially the same as basis.	CR SVC	Cost-Reimbursement Service	SAP	Simplified Acquisition Procedures
				CI	Commercial Item
App Dev	"X" indicates the clause has an approved deviation. The PCD authorizing the deviation is listed.	FP CON	Fixed-Price Construction	Clause application	R = Required A = Required-When-Applicable O = Optional

Clause/ Provision Number	Title	Date	Prescribed In	P or C	UCF	IBR or FT	Fill In	Mod or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A&E	ID DEL	TRN	SAP	CI
1852.245-83	Real Property Management Requirements	(JAN 2011)	1845.107-70 (n)	C	G	FT	X			A	A		A	A	A	A	A	A	A			A	
1852.246-71	Government Contract Quality Assurance Functions	(OCT 1988)	1846.470	C	E	FT	X	X		O	O	O	O	O	O	O	O	O		O	O		
1852.246-72	Material Inspection and Receiving Report	(APR 2015)	1846.674	C	E	FT	X	X		A	A	A	A	A	A	A	A	A		A	A		A
1852.246-73	Human Space Flight Item	(MAR 1997)	1846.370	C*	E	IBR				A	A	A	A					A		A		A	
1852.246-74	Counterfeit Electronic Part Detection and Avoidance	(OCT 2023)	1846.7003	C	I	IBR				A	A	A	A	A	A	A	A	A	A	A	A	A	A
1852.247-71	Protection of the Florida Manatee	(JUN 2018)	1847.7001	C*	H	IBR				A	A	A	A	A	A	A	A	A		A	A	A	A
1852.247-72	Advance Notice of Shipment	(OCT 1988)	1847.305-70(a)	C	F	FT	X	X		O	O	O	O					O		O		O	

SUBPART 1852.301—SOLICITATION PROVISIONS AND CONTRACT CLAUSES MATRIX

(Revised September 11, 2018)

Key:

P or C	Provision or Clause	FP SUP	Fixed-Price Supply	CR CON	Cost-Reimbursement Construction
*	* indicates the clause flows-down to subcontracts	CR SUP	Cost-Reimbursement Supply	T&M LH	Time & Material/Labor Hour
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Fill-in	"X" indicates the clause requires text to be filled-in by the CO.	FP SVC	Fixed-Price Service	TRN	Transportation
Mod or Sub	"X" indicates the CO is authorized to make specific modifications to the clause or to use the clause on a "substantially as stated/substantially the same as basis.	CR SVC	Cost-Reimbursement Service	SAP	Simplified Acquisition Procedures
				CI	Commercial Item
App Dev	"X" indicates the clause has an approved deviation. The PCD authorizing the deviation is listed.	FP CON	Fixed-Price Construction	Clause application	R = Required A = Required-When-Applicable O = Optional

Clause/ Provision Number	Title	Date	Prescribed In	P or C	UCF	IBR or FT	Fill In	Mod or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A&E	ID DEL	TRN	SAP	CI
1852.247-73	Bills of Lading	(JUN 2002)	1847.305-70(b)	C	F	FT	X	X		O	O	O	O					O		O		O	

PART 1853
FORMS

(*Revised November 3, 2017*)

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PART 1853
FORMS

Subpart 1853.1—General

1853.100 Scope of subpart.
This subpart contains information regarding the forms prescribed in this regulation. Unless specified otherwise, the policies in FAR Part 53 apply to NASA-prescribed forms.

1853.101 Requirements for use of forms.
The requirements for use of the forms in this part are contained in NFS parts 1801 through 1852 where the subject matter applicable to each form is addressed. The specific location of each form's prescription is identified in subpart 1853.2.

1853.103 Exceptions.

(1) Requests for exceptions to standard or optional forms shall be forwarded through the center forms manager to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

(2) Alteration of any form in this part is prohibited unless prior approval has been obtained from the Headquarters Office of Procurement, Procurement and Grant Policy Division. Requests for alteration shall show suggested additions and/or deletions to the form and shall be coordinated with the center forms manager before transmittal to the Headquarters Office of Procurement, Procurement and Grant Policy Division.

(3) Use for the same purpose of any form other than one prescribed by this Regulation requires prior approval of Headquarters Office of Procurement, Procurement and Grant Policy Division.

1853.105 Computer generation.
Forms prescribed by this Regulation may be adapted for computer preparation providing there is no change to the name, content, or sequence of the data elements, and the form carries the form number and edition date.

1853.107 Obtaining forms.

(c)(i) NASA centers and offices may obtain the electronic forms prescribed in the FAR at https://www.gsa.gov/reference/forms or prescribed in this Regulation at https://nef.nasa.gov/. To request non-electronic hard copy of any NASA form in this part, contact the Enterprise Service Desk as described on the NASA Electronic Forms website.

(ii) Contracting officers, at the time of contract award, shall ensure that contractors are notified of the procedures for obtaining NASA forms required for performance under the contract.

1853.108 Recommendations concerning forms.
Headquarters Office of Procurement, Procurement and Grant Policy Division is the office responsible for submitting form recommendations.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.
This subpart summarizes the prescriptions of NASA forms and other forms adopted by NASA for use in acquisition.

1853.204 Administrative matters.

1853.204-70 General (NASA Forms 533M, 533Q, 1098, 1611, 1612, and Department of Defense Forms 1593 and 1594).

(a) The following forms are prescribed in 1842.72:
(1) NASA Form 533M, Monthly Contractor Financial Management Report.
(2) NASA Form 533Q, Quarterly Contractor Financial Management Report.

(b) *NASA Form 1098, Checklist for Contract Award File Content.* Prescribed in 1804.803-70.

(c) The following forms are prescribed in 1804.804-2 and 1804.804-5.
(1) NASA Form 1611, Contract Completion Statement.
(2) DD Form 1594, Contract Completion Statement.

(d) The following forms are prescribed in 1804.804-5:
(1) NASA Form 1612, Contract Closeout Checklist.
(2) DD Form 1593, Contract Administration Completion Record.

1853.208 Required sources of supplies and services.

1853.208-70 Other Government sources (Department of Energy Form CA-10-90.COM, Nuclear Regulatory Commission Form 313).

(a) *U.S. Department of Energy Isotope and Technical Service Order* Form CA-10-90.COM. Prescribed in 1808.003-70(a).

(b) *Nuclear Regulatory Commission Form* NRC Form 313, *Application for Materials License.* Prescribed in 1808.003-70(a).

1853.215 Contracting by negotiation.

1853.215-70 Price negotiation (NASA Form 634 and Department of Defense Form 1861).

(a) *NASA Form 634, Structured Approach—Profit/Fee Objective.* Prescribed in 1815.404-470.

(b) DD Form 1861, *Contract Facilities Capital Cost of Money.* Prescribed in 1830.70, and instructions for completion are in 1830.7001-2.

1853.216 Types of contracts.

1853.216-70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, and 781).
The following forms are prescribed in 1852.216-89:

(a) NASA Form 778, Contractor's Release.

(b) NASA Form 779, Assignee's Release.

(c) NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

(d) NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

1853.217 Special contracting methods (NASA Form 523).
NASA Form 523, NASA-Interagency Purchase Request. Prescribed in 1817.503(b).

1853.225 Foreign Acquisition (Customs Form 7501).
CBP Form 7501, *Entry Summary.* Prescribed in 1825.903 and 14 CFR 1217.104.

1853.242 Contract administration.

1853.242-70 Delegation (NASA Forms 1430, 1430A, 1430B, 1430C, 1430D, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* Prescribed in 1842.202(b)(ii).

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* Prescribed in 1842.202(b)(ii).

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* Prescribed in 1842.202(b)(iii).

(d) *NASA Form 1433, Letter of Audit Delegation.* Prescribed in 1842.202(b)(iv).

(e) *NASA Form 1634, Contracting Officer Representative (COR) Delegation.* Prescribed in 1801.602-2(d)(iii).

(f) *NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.* Prescribed in 1815.404-2(a)(1)(D).

1853.245-70 Property (NASA Form 1018).
NASA Form 1018, NASA Property in the Custody of Contractors. Prescribed in 1852.245-73. Instructions for form completion are in 1845.7101.

1853.246 Quality Assurance (Department of Defense Forms 250 and 250c).
The following forms are prescribed in 1846.670. Instructions for form completion are in 1846.672:

(a) DD Form 250, Material Inspection and Receiving Report.

(b) DD Form 250C, Material Inspection and Receiving Report- Continuation Sheet.

1853.249-70 Termination of contracts (NASA Forms 1412, 1413).

(a) *NASA Form 1412, Termination Authority.* Prescribed in 1849.101-71.

(b) *NASA Form 1413, Termination Docket Checklist.* Prescribed in 1849.105-70.

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.
This subpart contains illustrations of NASA forms and other forms used by NASA in acquisitions and not prescribed in the FAR.

1853.301 Standard forms.
This section illustrates standard forms (SFs) specified for use in acquisitions.

1853.303 Agency forms.
This section illustrates NASA and other agency forms specified for use in acquisitions. The other agency forms are arranged numerically by agency following the NASA forms.

Part 1871—Reserved

NO NFS TEXT

PART 1872
ACQUISITION OF FLIGHT INVESTIGATIONS

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PART 1872
ACQUISITION OF FLIGHT INVESTIGATIONS

1872.000 Scope of Part.
This part prescribes policies and procedures for the acquisition of flight investigations.

1872.001 Definitions.
"An investigation," means a goal-driven effort to obtain new scientific or technical knowledge that includes both acquiring and analyzing data and designing, developing or adapting, deploying, and operating flight instrumentation and necessary platform flight systems.

"Implementation merit and feasibility" means the capacity of a proposed investigation implementation, if successfully deployed and operated, to achieve its planned scientific or technical objectives.

Subpart 1872.1—The Flight Investigation Acquisition System

1872.101 General.
The investigation acquisition system depends on the participation of investigators in the definition and selection of investigations that contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate from the general Federal acquisition process for goods and services, but requires similar management and discipline to assure compliance with statutory requirements and considerations of equity and quality. Its primary application is the acquisition of science, exploration, or technology space flight investigations via complete flight instrumentation and, where required, platform flight systems.

1872.102 Key features of the system.

(a) Use of the system commences with the determination by the originating Mission Directorate Associate Administrator (MDAA) that the acquisition process is appropriate for a program (but see 1872.202). The Announcement of Opportunity (AO) is recognized as a type of full and open competition (10 U.S.C. 3012). The AO is a form of Broad Agency Announcement (BAA) (see FAR 35.016 and 1835.016 for general BAA requirements) and supports an open, fair and transparent competitive evaluation and selection process that is based on review of proposals by peer scientists or other appropriate technical experts applying their communities' standards of merit. An AO does not specify the investigations to be proposed but solicits investigator ideas that can contribute to broad, publicly documented objectives. A formal competitive evaluation process is utilized to determine which submitted proposal(s) shall be selected. Evaluations for merit and feasibility are conducted by peer experts in the fields represented in the proposals. Care is taken to avoid personal and organizational conflicts of interest, both actual and perceived. Evaluators are chosen by NASA and may be from NASA, other Government agencies, universities, or the commercial sector, or other experts. In addition to the evaluation for intrinsic

merit and implementation merit and feasibility, aspects of engineering, cost, schedule, management, and risk are reviewed by specialists in those areas. The evaluation results are combined with considerations of relevance and affordability and other programmatic factors to determine investigation(s) to be selected.

(b) The AO acquisition system incorporates the following key elements ("phases") and component sub-elements ("processes"):

(1) The Announcement of Opportunity (see 1872.3)

(2) Evaluation of Proposals (see 1872.4; processes defined in 1872.401)

(3) Recommendation, Selection, and Debriefing (see 1872.5; processes defined in 1872.501).

(c) Some AO acquisitions are conducted using a two-step system, where a subset of submitted proposals are selected through the processes describe in 1872.408(a).
[PN 23-12]

1872.103 Management authorities and responsibilities.

(a) For simplicity, this policy assumes that an acquisition is sponsored by a division within a directorate that is responsible for its execution. The policy and its phases and processes can be mapped onto other organizational structures as needed. The authorities and responsibilities for the major phases and their component processes emanate from the MDAA and are exercised as follows:

(1) The MDAA retains the authority and responsibility for final approval of the AO and its release as well as for proposal evaluation and resulting selection(s).

(2) The sponsoring division of a solicitation is responsible for development of the AO (see 1872.3), management and oversight of the assessment (see 1872.403) and Accommodation (see 1872.406) processes of the Evaluation phase as well as the recommendation (see 1872.502), and award, notification of proposers, and debriefing (see 1872.504) processes of the Recommendation, Selection, and Debriefing phase. During AO preparation, the division is responsible for adapting (if necessary) the standard evaluation criteria (see 1872.402) and development of any optional specialty criteria required for the acquisition. Examples of a specialty criterion would be an additional criterion for evaluating proposed technology demonstrations or student investigations. The division designates a Division Program Acquisition Lead (AL) to carry out these functions.

(3) The management and oversight of the categorization (see 1872.404) and validation (see 1872.405) processes of the evaluation phase, and of the selection process (see 1872.503) of the recommendation and selection phase, are the responsibility of a senior directorate-level official appointed by the MDAA as Directorate AL. The Directorate designates a Technical, Management, and Cost (TMC) Acquisition Manager (TAM) to oversee the TMC assessments, including development of the TMC feasibility evaluation reports and to represent their results during subsequent acquisition phases. During the acquisition process, the TAM works closely with the Division Program AL.

(b) The MDAA, or other Selection Official if designated by the MDAA, selects the proposal(s) that are to be funded for execution.

(c) The Principal Investigator (PI) on each selected proposal is assigned responsibility and authority for success of the investigation through a contract between NASA and his or her institution. A contract is the preferred instrument for an AO award because the Agency's investment in a flight investigation is large and only a contract provides sufficient enforcement and insight mechanisms to ensure that this investment is well managed. However, for awards to a NASA Center or other Government entities, other appropriate instruments are used. Participation by foreign investigators, or by U.S. investigators in a foreign program, is defined and governed on a no-exchange of funds basis by a formal international Space Act Agreement between NASA and the foreign sponsoring governmental agency or responsible entity (per NPD 1360.2).

(d) The MDAA may delegate Program Management responsibility for overseeing execution of the selected investigation(s) to a Program Office.

1872.104 Procurement integrity and conflicts of interest.

(a) Every participant in the AO process shall be individually responsible for following applicable standards of conduct. Participants in the AO process are engaged in a Federal acquisition process, which is subject to overarching statutes and regulations, including the Federal Acquisition Regulation (FAR), which states: "Government business shall be conducted in a manner above reproach, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none." (see FAR 3.101-1) Government employees and non-government employees involved in the AO process are all obligated to conduct themselves in accordance with applicable ethical standards.

(1) Government employees, including Inter-governmental Personnel Act (IPA) appointees, are subject to and deemed to know their obligations under all applicable statutes and regulations governing the conduct of their official responsibilities. Participants' attention is directed, in particular, to the following statutes and regulations that are regularly applied in NASA acquisition matters:

(A) 18 U.S.C Section 208, which prohibits participation in a particular matter, such as an AO acquisition, while holding a personal financial interest in a party involved in the acquisition;

(B) The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635 (note, in particular, those provisions defining parties with whom an employee has a covered relationship);

(C) FAR 3.101, Improper Business Practices and Personal Conflicts of Interest, and 1803.101; and

(D) The Procurement Integrity Act, 41 U.S.C. Chapter 21, as applicable.

(2) Non-government employee participants in the AO process are subject to—

(A) Applicable portions of FAR 3.101, Improper Business Practices and Personal Conflicts of Interest and corresponding provisions of 1803.1;

(B) Applicable provisions of Procurement Integrity Act, 41 U.S.C. Section 2102 et seq. (Prohibitions on disclosing and obtaining procurement information);

(C) NASA Agency and Mission Directorate policies governing actual and apparent conflicts of interest, to the extent those policies are incorporated into contracts, as well as all instructions in the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES); and

(D) Clause(s) of any contract or agreement, between the government and the Participant or the Participant's employer, under which the participant supports an AO process and which prohibits, restricts or places conditions upon participation in any government acquisition.

(b) Participants are deemed to have knowledge of the parties (companies, universities, non-profit organizations, and governmental organizations) proposing to NASA under the AO acquisition. The Division Program AL is responsible for compilation of a list of parties proposing under an AO as soon as possible after proposals are submitted and shall distribute the list to AO acquisition process participants before the proposal evaluation (or the individual participant's evaluation activity) begins. This list shall include proposing organizations, as well as every party named in a proposal as a co-proposing organization or funded participant in the proposed investigation.

(c) Each AO acquisition process participant shall review the list of parties involved in the acquisition and identify all parties with whom the participant has an interest or covered relationship. The participant shall report all such interests and relationships to the Directorate or Division Program AL and Office of the General Counsel (OGC) before commencing any participation in the acquisition, including attendance at any meeting pertaining to the acquisition. The Directorate or Division Program AL shall require acquisition meeting attendees to sign in on a meeting attendance sheet, which will remind the attendees of their obligation to ensure that any report of a conflicting interest or relationship be resolved with the assistance of agency counsel prior to the meeting. Any government employee who has filed either an OGE Form 278 or OGE 450 shall be aware that the assets and positions reported there may not include all interests that could give rise to a conflict, that filing a disclosure report does not, by itself, resolve a conflict, and that resolution of a conflict reported for a prior acquisition does not resolve the conflict for the present and subsequent acquisitions.

1872.105 Organizational conflicts of interest.

Organizational conflicts of interest can arise from a variety of circumstances in which a party competing in a government acquisition has a conflicting role potentially resulting in that party obtaining an unfair competitive advantage. Circumstances creating an actual or apparent organizational conflict of interest include, but are not limited to, an organization assisting or advising a government agency in its acquisition, having access to nonpublic information pertaining to the acquisition or a competing party, or having some role in defining Government requirements. Any AO process participant who becomes aware that a competing organization: supports the government in conducting the acquisition; has access to nonpublic information about the AO acquisition; contributes to preparation of the AO solicitation; or plays any role in

the AO process affording that organization a competitive advantage; shall notify the Division Program AL and the OGC of these circumstances. A government employee whose organizational unit (at NASA, the organizational unit is the Center) is performing a role related to an AO (either in support of the government administration of the AO, or as a member of a team competing under the AO), shall seek instruction from the Division Program AL and the OGC before engaging as a participant in the AO.

1872.106 Confidentiality of proposal information and trade secrets.

(a) Participants in the AO process shall properly handle and maintain the confidentiality of proposal information, trade secrets and source selection information (as defined by FAR section 2.101) obtained through the AO process. The following statutes, regulations and standards apply to all participants in the AO process:

(1) The Procurement Integrity Act, 41 U.S.C. 2102 et seq.;

(2) FAR section 3.104-4 (Disclosure, protection and marking contractor bid or proposal information and source selection information); and

(3) All instructions for proposal handling and non-disclosure agreements in NSPIRES.

(b) In addition to the statutes and regulations listed in paragraph (a) of this section, Government employees are subject to the Trade Secrets Act, 18 U.S.C. 1905, which imposes criminal sanctions for mishandling of trade secrets.

(c) Non-NASA employees are subject to clause(s) of any contract or agreement between the government and the participant or the participant's employer, under which the participant supports an AO process and which prohibits, restricts or places conditions upon receipt, handling and transfer of data.

(d) Participants shall immediately consult the Division Program AL or Directorate AL when they become aware of any mishandling of proposal information, trade secrets or source selection information. If needed, participants shall, in consultation with the Division Program AL or Directorate AL, obtain advice from the OGC concerning the handling of proposal information, trade secrets and source selection information.

Subpart 1872.2—Applicability

1872.201 General.

The AO system used for acquisition of science, technology, or exploration flight investigations is different and separate from the Agency procedures for acquisitions for prior known requirements. A decision to use the AO acquisition system is based on a determination that it is the most appropriate to meet program needs.

1872.202 Criteria for determining applicability.

The AO system can be used when in conditions in (a) are met and conditions in (b) are not met.

(a) A general distinction between normal acquisitions for goods or services and AO investigation acquisitions is that AO proposers define not only how they will accomplish investigation objectives but also the objectives themselves within the framework of broader articulated NASA goals. Unlike a proposal responding to a Request for Proposals, an AO proposal effectively defines a Statement of Work in addition to the approach (and cost) for how the proposer plans to carry it out. All of the following conditions shall exist for the AO acquisition system to be applicable:

(1) NASA has a general goal that can be furthered through novel experimental approaches. To develop such approaches, NASA wishes to draw upon the broadest possible reservoir of ideas;

(2) It benefits the Agency to be able to choose from among competing objectives advancing the general goals and their approach for doing so;

(3) Full responsibility and broad authorities for investigation success will be vested in
the Principal Investigator(s) of selected proposal(s); and

(4) Execution of the selected investigation(s) will be subject to standard flight program management policies and procedures detailed in NPR 7120.5.

(b) The investigations acquisition process shall not be used when any of the following characteristics are present:

(1) The requiring office can characterize a requirement sufficiently to define in advance a common statement of work against which all proposals will be evaluated. This calls for a Request for Proposals;

(2) The investigation is conducted on collaborative basis that requires close and ongoing Agency participation in tactical management and decision-making. A proposer may also offer a partnership contribution to the joint effort. In this case, a Cooperative Agreement Notice would be appropriate;

(3) The investigation is of modest size and is to be conducted on a best-efforts basis and deliverables are limited to progress reporting and, if applicable, publication of final results. In this case a NASA Research Announcement (NRA) solicitation, usually but not always resulting in a grant (a financial assistance agreement), would be more suitable. Execution of such investigations may be subject to NPR 7120.8; or

(4) The program is so complex, costly, or risky, as to require specialized integration or coordination extending over a lengthy period where NASA's institutional capabilities may be required for successful execution. Such investigations may be directed to one of NASA's Centers. Even in such cases, however, it may be desirable for the reasons in paragraph (a) above to compete subordinate investigation elements (such as instrumentation) via one or more AOs.

(c) Typical examples where the use of AOs is most applicable are solicitation of complete small- and intermediate-size investigations (larger and more costly than suborbital-class research but smaller and less expensive than the largest and most expensive strategic flight investigations), of instrument investigations on larger investigations whose overall management

is assigned to a NASA Center, or of space flight instrument investigations contributed to a non-NASA mission.

1872.203 Approval.
Generally, the MDAA determines whether or not to use the AO acquisition system. On the largest investigations, a decision whether to use the AO system may be made by the Agency Acquisition Strategy Process (NPD 1000.5), under the aegis of the NASA Associate Administrator or designee, based on Agency-level programmatic considerations.

Subpart 1872.3—The Announcement of Opportunity

1872.301 General.
The AO provides a clear statement of the requirements for acceptable proposals (including proposers' specification of objectives, technical approach to achieve these objectives, and management strategies and partnerships), as well as NASA's method of proposal evaluation and the format and content of submitted proposals. The purpose of the AO is to obtain from offerors sufficient information to correctly and equitably assess the relevance, merit, cost, and likelihood of success (risk) of proposed investigations. The solicitation shall be conducted in such a way as to ensure that all potentially capable and interested offerors are alerted to the AO's release enough in advance and are provided enough background information to enable them to submit proposals that are fully compliant with AO requirements and can be accurately evaluated.

1872.302 Preparatory effort.

(a) The originating directorate incorporates in AO planning and development the best available information on opportunities for advancement in the chosen area, including, where appropriate, results from preparatory studies and exploratory analyses.

(b) The Directorate will—

(1) Forecast the approximate time frame for AO release on an appropriate NASA web site;

(2) Synopsize the AO in the Governmentwide point of entry (GPE) prior to release;

(3) Concurrent with AO release, collect relevant technical and other information necessary for proposal preparation and post this information on the appropriate AO web site (i.e., AO solicitation library);

(4) Define AO provisions, including the evaluation process for proposals, that express a clear exposition of the acquisition's unique objectives, constraints, and requirements; and

(5) Post on the web an Evaluation Plan, specific to the AO, preferably concurrent with the AO release, but certainly well before receipt of proposals. This plan shall detail the steps in the overall process, including how the evaluations are conducted and their sequence, procedures for avoiding conflicts of interest, and any special features of the evaluation process.

(c) In some cases, the best source of the technical support needed to develop key elements of an AO resides at a NASA Center whose personnel will participate as proposer(s) to the AO. It is essential, out of concern for possible impairment of judgment or its appearance, to isolate these personnel and their efforts from individuals at their Center involved in any proposal development activity for the AO in question. In this case, special steps shall be taken to ensure process integrity.

(1) At a NASA Center, the line management of AO support personnel shall take responsibility for training and implementing firewall isolation of the individuals involved from persons at that Center with proposal participation. The Directorate AL will work with the Division Program AL and Center management to put the necessary documentation in place. Except for statutory financial conflicts of interest with non-Governmental participants in proposals (for which Center Chief Counsel shall be consulted), requirements for avoiding possible bias or impairment of judgment flow from the Directorate's widely recognized research community standards.

(2) At the Jet Propulsion Laboratory (JPL), a formal waiver for an organizational conflict of interest is also required, and shall be approved by the NASA Headquarters Office of Procurement (OP). This will involve the Directorate and Division, the JPL NASA Management Office (NMO), and the OGC.

(d) Additional means of publicizing the AO may also be used, such as press releases, newsletters, and announcements at professional meetings, as appropriate, consistent with the policies of equal treatment and maximizing the pool of qualified potential proposers.

1872.303 Responsibilities.

(a) The overall responsibility for issuing AOs resides with the MDAA. The cognizant MDAA may delegate, with coordination with the OP, responsibility for development of an AO to a Program Office (see 1872.302(c)(1)).

(b) The originating Directorate is responsible for the content of the AO and its coordination with other concerned Headquarters offices and, where Headquarters has retained the task of AO development, with the related Program Office. At Headquarters, development of the AO and subsequent acquisition steps are generally performed by the Division Program AL and TAM, under the oversight of the Directorate AL (see 1872.104 (a)(2) and (3)). All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with part 1872 and other applicable regulations, including those addressing ethics and procurement integrity standards (see 1872.105, 106, and 107). To this end, they are expected to seek advice and guidance as needed from the OP, OGC, and Office of International and Interagency Relations (OIIR).

(c) The AO is released, with the concurrence of the OP, the OGC, and the Office of Interagency and International Relations, over the signature of the originating MDAA.

1872.304 Proposal opportunity period.

(a) It is good practice to issue a draft AO in advance of the final AO, with a subsequent period for comments and questions, nominally 30 days. If a draft AO has not been released, at a minimum the key elements of a pending AO shall be described in a community announcement to the potential proposer community via the NSPIRES and the Governmentwide point of entry (GPE) no less than 30 days before the release of a final AO. (See FAR 5.201)

(b) Responses to questions about a draft AO judged to be material to preparation of a responsive proposal will be publicly promulgated via posting by the Division Program AL as soon as possible on the AO web site. The goal is to ensure that the same AO clarifications are made available simultaneously to all proposers.

(c) The standard time allocated for proposal submission after release of the final AO is at least 90 days. Other periods may be used with approval of the Directorate AL.

(d) In general, an AO is issued with a firm and definite proposal submission due date. Omnibus AOs are issued without specific proposal opportunities; specific proposal opportunities are added to omnibus AOs by amendment, and each specific proposal opportunity shall have a firm and definite proposal submission date. However, an AO may be amended with late clarifications or changes, or to extend the due date to ensure adequate time for development of quality proposals, for whatever reason. Proposers shall be promptly informed of departures from provisions in a released AO by the same means as its release NSPIRES.

1872.305 Guidelines for the announcement of opportunity.

(a) An AO shall be tailored to the particular needs of the contemplated investigations and be complete in itself. To assist AO development and promote consistency between solicitations, the baseline required format and minimum necessary contents of the AO may be defined in a template Standard AO. Tailoring may include addition of evaluation Criteria, deletion or modification of standard evaluation Factors, or incorporation of additional Factors specific to program requirements (see 1872.402(a)).

(b) An AO shall incorporate proposal instructions and provisions necessary to address any AO-unique aspects.

(c) Requirements and guidelines for foreign participation in AO-solicited programs shall be clearly articulated in the AO and be consistent with NPD 1360.2 and NPD 2190.1. Foreign proposals or U.S. proposals with foreign participation shall be treated in accordance with NFS 1835.016-70.

(d) Proposals shall be submitted electronically via NSPIRES.

(e) Noncompliant (including late) proposals may be declined without review.

1872.306 Proposals submitted by NASA investigators.

(a) NASA accepts and evaluates proposals submitted by NASA Centers in response to an AO. A NASA investigator may team with one or more non-Government co-investigators.

(1) The competitive AO process serves as a means of selecting proposals that offer the best value for the government in accordance with the evaluation factors in the AO. During the proposal preparation phase, non-government sources are able to assemble their research teams and select hardware fabricators and service providers without being subject to procurement rules requiring full and open competition. Although NASA Centers have the same focus of putting together a winning team, they are bound by the competition requirements of the Competition in Contracting Act (CICA) and Government ethics standards.

(2) Where a non-government partner/team member is identified in a NASA Center's proposal to have substantial involvement in conducting the investigation, but is not also providing hardware, equipment or instrumentation, selection of the proposal for funding under the AO satisfies the regulatory competition requirements for any award(s) to the participating non-government partner/team member(s) named in the proposal. The Center may directly award a contract to such entity without additional competition or approval of a Justification of Other than Full and Open Competition (JOFOC). The AO constitutes a competition that encompasses proposals submitted by all team members of every offeror including NASA Centers.

(3) Acquisition by a NASA Center of supplies or services that do not constitute research, i.e., equipment, materials, software, facilities, or non-research services incidental to the proposed investigation, shall be treated differently. Examples of non-research services include program/project management assistance, supplies, and/or administrative support services. Procurement requirements for competition under an AO are not satisfied by the AO competition itself for acquisition of non-research supplies and services. Such items may be acquired under existing contract vehicles. Otherwise, they shall be acquired through a newly competed contract or acquired non-competitively with support of a JOFOC.

(b) In addition to complying with proposal preparation instructions contained in the AO, proposals submitted by NASA Centers shall address the following matters:

(1) *Co-investigators, Instrument Offerors, and Spacecraft Offerors*.

(A) The proposal shall describe the process that was used for selecting proposed team members, which includes both spacecraft and instrument providers. While a formal solicitation is not required, the process should include the following aspects: notice of the opportunity to participate to potential sources, submissions from and/or discussions with potential sources, and objective criteria for selecting team members among interested sources.

(B) The proposal shall also include a representation that NASA investigators and any other Government employees have examined their financial interests and have determined that no personal conflict of interest exists.

(2) *Supplies and support services*.

(A) The proposal shall indicate that the supplies or support services are available under an existing Government contract; or

(B) The proposal shall state that the supplies or support services will be acquired under a full and open competition; or

(C) The proposal shall explain the basis of a justification for acquiring the supplies or support services noncompetitively (FAR 6.3 and NFS 1806.3).

(c) A selection decision approving the non-Government research team members as selected co-investigators satisfies legal and regulatory requirements without other competition or justification.

Subpart 1872.4—Evaluation of Proposals

1872.401 General.

(a) The Evaluation phase comprises a series of processes that begin with the expert review of each proposal against standard criteria and ends before formulation of specific recommendations for selection by the Selection Official. These processes, founded on use of formal evaluation Criteria and Factors, constitute a series of distinct steps to consolidate and validate each proposal's characteristics that determine its eligibility for selection. These criteria and factors and the processes that shall be conducted in the evaluation of proposals received in response to any AO (Assessment, Categorization, Validation, and, only if required, Accommodation), are as follows:

(1) *Criteria and factors.* (see 1872.402) The Standard AO template provides a generally used set of three major evaluation criteria, each with its own set of subordinate Factors that are used by evaluation panels as the rubric for their reviews. These can be adjusted in an AO to suit the needs of its program goals.

(2) *Assessment*. (see 1872.403) The purpose of assessment is to determine the quality, relevance, and selectability of a proposed investigation in terms of science, exploration, or technology investigation intrinsic merit, implementation merit and feasibility, and TMC feasibility. The TMC feasibility includes a cost risk assessment that incorporates an analysis of cost threats such as schedule and performance risk.

(3) *Categorization.* (see 1872.404) The purpose of categorization is to assign to each proposed investigation, based on the assessment results, an integrated appraisal of its overall selectability;

(4) *Validation.* (see 1872.405) The Validation phase reviews the end-to-end acquisition activity to this point, from the AO through Categorization. The fundamental objective is to ensure that selection options that are presented to the Selection Official via the accommodation and recommendation phases have undergone a review that is expert, thorough, equitable, conflict-free, and defensible; and

(5) *Accommodation.* (see 1872.406 and 1872.407) In some acquisitions, such as instrumentation for flight on a shared platform, system and operational constraints of various kinds (e.g. mass, power, location on the platform, pointing and viewing geometry, and thermal factors) may determine which instrument combinations are ultimately implementable, and therefore, selectable, for flight. Accommodation analysis thus may impact downstream integrated payload Recommendation decisions.

(b) The assessment, categorization, and validation processes shall be accomplished in every investigation acquisition; the accommodation process shall be executed where applicable.

An overriding principle is the separation of the inputs, processes and criteria, and outputs for each of the sequential steps from assessment through accommodation. Some latitude is afforded as long as this principle is maintained and the method employed clearly ensures the traits listed in paragraph (a)(4) of this section.

(c) In general, several components of the Assessment process are conducted in parallel (see 1872.403). Categorization follows when the assessment process is complete; Categorization shall be completed before proceeding to validation.

(d) Although the purposes of the validation and accommodation processes are distinct, they can be implemented in various combinations to suit a given acquisition's needs. For example, acquisitions for multiple instrumentation investigations for a tightly constrained legacy platform could have two Accommodation stages. After Assessment or Categorization, an initial individual accommodation analysis can be performed for each favorably assessed instrument. This could be followed by a second more comprehensive integrated accommodation analysis during the later recommendation process (see 1872.502) to identify implementable multi-instrument payload configurations. See 1872.407 for additional information.

(e) Persons not having an official role in AO evaluation meetings, which often deal with confidential and proprietary proposer material, may attend only with the explicit approval of the Directorate AL, subject to provisions of 1872.105 and 1872.106. They are not permitted to speak unless invited to do so by the meeting chair.

1872.402 Criteria and factors.

(a) Standards and adjustments.

(1) Each AO and its posted evaluation plan shall describe the criteria and their subordinate factors that evaluators will apply in evaluating proposals. This information will be used by proposers to focus their proposals' presentation of objectives and approaches. In most cases these criteria will be the set of core criteria and their standard factors. The three core criteria and their standard factors, are defined in (b)(1) through (b)(3) below; additional criteria may be added to these three per the AO's particular needs (e.g., for student collaboration plan evaluation; see 1872.305(a)). Alternatively, Factor C-3 may be deleted from solicitations for instrument-only investigations (i.e., where no platform is solicited);

(2) Criteria in the AO and evaluation plan may have deleted or modified Factors or additional Factors specific to the acquisition in question (see 1872.305(a));

(3) The assessment factors that support each criterion shall be explicitly provided in the AO and posted evaluation plan;

(4) The relative weighting of each Criterion shall be stated in the AO if they are unequal; and

(5) Any adjustments to the criteria or factors after the release of the AO shall be documented in a formal AO amendment and released via NSPIRES, generally with an extension of the due date for submitting proposals.

(b) *Core criteria and standard factors*.

(1) *Intrinsic Science, Technology, or Exploration Merit (Evaluation Criterion A).*

Factor A-1. Compelling nature and priority of the proposed investigation's science, exploration, or technology goals and objectives
Factor A-2. Programmatic value of the proposed investigation
Factor A-3. Likelihood of science, exploration, or technology success
Factor A-4. Science, exploration, or technology value of the threshold investigation

(2) *Science or Technology Implementation Merit and Feasibility of the Investigation (Evaluation Criterion B).*

Factor B-1. Merit of the instruments and investigation design for addressing the science, exploration, or technology goals and objectives
Factor B-2. Probability of technical success
Factor B-3. Merit of the data and/or sample analysis plan
Factor B-4. Science, exploration, or technology resiliency
Factor B-5. Probability of investigation team success

(3) *Technical, Management, and Cost (TMC) Feasibility of the Investigation Implementation, Including Cost Risk (Evaluation Criterion C).*

Factor C-1. Adequacy and robustness of the instrument implementation plan
Factor C-2. Adequacy and robustness of the investigation design and plan for mission operations
Factor C-3. Adequacy and robustness of the flight systems
Factor C-4. Adequacy and robustness of the management approach and schedule, including the capability of the management team
Factor C-5. Adequacy and robustness of the cost plan, including cost feasibility and cost risk

(c) Note that Factors B and C at 1872.402(b)(2) and (b)(3) address proposed instrumentation but from different perspectives. In order to obtain a comprehensive evaluation against each of these Criteria, independent assessments are developed by reviewers with appropriate expertise in separate panels. The Division Program AL and the TAM will ensure that instrument weaknesses identified by either panel are shared with the other panels for consideration and also against the other panel's Factors. Any inconsistencies between the reports of the two panels will be considered during the categorization process.

1872.403 Assessment.

(a) One or more panels of community experts free from personal and organization conflicts of interest, evaluate proposals against the criteria. Criteria A and B are evaluated by the same science, exploration, or technology peer review panel. Criterion C is evaluated by a TMC peer review panel. Panel members will act in the capacity of individuals. For each Factor in each criterion, the panels will develop assessment findings or state that there are none. Panel chairs will prepare for each proposal a report Form on findings for each Criterion that captures the major points made during its consideration of the Criteria Factors. The findings for each Factor are expressed in short narratives for identified Major Strengths, Minor Strengths, Major Weaknesses, and Minor Weaknesses. The chair will also poll the members individually on their ratings for each of the Criteria on a standard scale and record them on its Criterion's Forms

(Form A for Criterion A, Form B for Criterion B, and Form C for Criterion C). "Comments to the Proposer" and "Comments to NASA" may be added; the latter are not provided to the proposers.

(b) Use of any approach other than the one defined in (a) above shall conform to the principles and constraints in sections 1872.105 and 1872.106 and requires consultation with the OGC and the OP and the approval of the MDAA.

(c) *Products of the assessment process*. At the conclusion of this phase, the Forms A and B for each proposal are combined with the corresponding Forms C developed by the TMC panels, plus any additional Criterion Forms, into an integrated report for that proposal. The package of these reports for all proposals is the input for the next phase, Categorization.

1872.404 Categorization.

(a) Just as the assessment process distills the distinctive strengths and weaknesses of each proposal into the concise, critical representations in the Criterion Forms, the categorization process condenses the contents of these Forms into a summary of the selectability of each proposed investigation. In doing so, the categorization process continues to focus on the scientific and technical merits, implementation feasibility, management approach, cost realism, and comprehensive risk assessment of each proposal individually. The objective of the categorization process is to derive a portfolio of consolidated merit-risk characterizations that will be subjected during the recommendation and selection processes to additional programmatic criteria.

(b) The categorization process is a critical gateway to selection. A proposal that categorizes poorly has virtually no chance of selection; conversely, a proposal that emerges from this process with a category rating in the top range is considered highly eligible to be selected for implementation. The Agency will devote years and very substantial resources to achieve an investigation's represented results and to overcome any unforeseen technical or management problems. As a result, the Categorization process determining these ratings shall be conducted by a Headquarters committee of government employees that combines appropriate scientific, technical, and project management expertise with breadth and experience. Only government employees may be appointed to the Categorization Committee. IPA personnel may also be appointed provided they are free of both actual or perceived bias and statutory restrictions as provided in 1872.104 and 1872.105. The OGC shall be consulted in any areas of uncertainty.

(c) The authority to appoint the Categorization Committee is vested in the MDAA, who may delegate it to the Directorate AL (see 1872.104(a)(3)). These appointments shall be made well in advance of the committee's meeting in order to ensure availability and adequate preparation time. One committee member shall be appointed Chair by the MDAA or Directorate AL and shall have the authority and responsibility of conducting the categorization review.

(d) The sponsoring Division Program AL (see 1872.104(a)(2)) will brief the committee on the AO and Assessment phase and present the Assessment results for each proposal. The division program AL may be assisted by other division staff involved in the Assessment phase. The TAM shall be present in the categorization meeting to answer any questions about the TMC reviews.

(e) In a situation where the number of proposal Forms A, B, and C (plus any other special Forms) to be categorized exceeds what members of a single committee can reasonably be expected to absorb and retain, the Categorization Committee can be divided into two or more panels to spread the effort among more staff members. In these cases, like proposals shall be gathered in the same panel to ensure that the competitive outcome between them is not affected by any inter-panel standards inconsistencies. In addition, the potential for inconsistent standards in separate Categorization panels can be further mitigated by crosschecking in the subsequent Validation phase and possible leveling action. In what follows, Committee Chair shall be understood as the Panel Chair if there is more than one panel of the Committee.

(f) The appointed members shall be provided with the Criterion Forms, with a description of the solicitation and evaluation process to date, and with clear instructions about how the categorization process is to be conducted, no less than seven calendar days before their meeting. This shall include a list of all participating institutions for review by members for potential conflicts of interest. It shall be clearly understood that all materials provided are competition-sensitive and shall be protected while in use and returned for dispositioning to the Directorate AL.

(g) Before the meeting begins, participants shall ensure compliance with ethics requirements (see 1872.105, 1872.106, and 1872.107); provisions regarding observers in 1872.401(e) also apply.

(h) The Categorization meeting shall include—

(1) A briefing, usually by the Division Program AL, on the course of solicitation and evaluation, beginning with characteristics of the solicitation, through a survey of the proposals received, and continuing with the conduct of the assessment process and an overview of its results;

(2) A presentation of each proposal's evaluation, given generally by the Division Program AL, followed by discussion moderated by the Committee Chair that results in a categorization (see 1872.403(d)) via a poll of members. A consensus is not required, but if a tie, or even a very close vote, persists after adequate discussion and several polls, the Chair may defer the decision for a proposal to a revisit at the end of the meeting. If a deadlock tie persists after this reconsideration, the Chair may break the tie by assigning the Categorization; and

(3) After the reviews for all proposal evaluations (or for all of the ones allocated to that panel if there is more than one panel) have been considered, the Chair will lead the panel in a crosscutting review of its proposals to ensure consistent standards have been applied. Any departure from equitable treatment shall be corrected before adjournment of the Committee or panel.

(4) The report of the Categorization Committee Chair consists, at a minimum, of a table of the final categorizations for each of the proposals. When a strong majority is not achieved for a given categorization, the manner in which that categorization was assigned shall be documented. It is good practice to include a brief categorization rationale for each proposal; this shall be limited to the most influential points raised during the discussions, including especially how the Committee balanced strong conflicting strengths and weaknesses. This rationale shall not simply restate the documented assessment findings on the criterion forms.

(i) During this process, Categorization Committee members are not permitted access to any of the proposals. This is to eliminate any possibility of re-reviewing of the proposals, which could be perceived as inequitable. In rare circumstances involving confusion or contradictions in Assessment findings for a proposal, the Chair can recess the Categorization Committee while the Division Program AL (only) consults the underlying proposal to resolve the issue for the Committee.

(j) If the Committee encounters a serious inconsistency in the assessment record, or other flaw that prevents a clear and supportable categorization from being assigned based on that record, the Committee Chair can guide the Committee in documenting the issue needing resolution and require the Division Program AL to reconvene the Criterion A/B panel or Criterion C panel to respond with a formal clarification that will enable the categorization to be completed by the Committee.

(k) A meritorious investigation is defined as one that has high overall intrinsic scientific, exploration, and/or technology merit and acceptable risk per the Criteria and objectives of the AO; categorizations are assigned according to the following definitions:

Category I – Well conceived, meritorious, and feasible investigations pertinent to the goals of the program and the AO's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.
Category II – Well conceived, meritorious, and feasible investigations that are recommended for acceptance, but at a lower priority than Category I, whatever the reason.
Category III – Meritorious investigations that require further development. Category III investigations may be funded for further development and may be reconsidered at a later time for the same or other opportunities.
Category IV – Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

(l) *Products of the Categorization process.*
The record of the meeting, which is input to the validation and accommodation phases, consists of the following elements:

(1) Meeting sign-in sheet, with a list of participating institutions, serving as conflict of interest-free self-certification by participants;

(2) Table of categorizations for each investigation, including results of the final and preceding (if any) poll results;

(3) A brief narrative Categorization Rationale for each of the categorizations; and

(4) Detailed minutes of the meeting, to be reviewed and approved by the Division Program AL and the Committee Chair.

(5) Categorization Report (see 1872.404(h)(4))

1872.405 Validation.

(a) The Validation phase is a procedure review intended as an independent check on the quality, balance, and integrity of the evaluation process to this point, including its adherence to the criteria and procedures defined in the AO and evaluation plan.

(b) The fundamental goals of the validation phase are to—

(1) Validate compliance of the processes followed, from solicitation through categorization, with applicable statutes and regulations and Agency procedures, and with their alignment with representations in the AO and Evaluation Plan;

(2) Ascertain that all proposals received fair and competent review;

(3) Ensure that the record of these processes is complete, including consistency of rationales for Assessment ratings and for Categorizations and adequacy of Forms A, B, and C (and others, if any); and

(4) Certify to the Selection Official that any division recommendations for selection developed from the foregoing processes are free from scientific, technical, procedural, and ethical flaws. Based on this certification, the division will be able to make recommendations for selection from the categorizations and the Selection Official will be able to confidently make selections without concerns about flaws in any of the foregoing evaluation steps.

(c) The validation phase is conducted by a Steering Committee chaired by the Directorate AL or other senior Directorate official designated by the MDAA.

(d) The Steering Committee is composed, like the Categorization Committee, of conflict-free government employees. Potential participation by IPAs and detailees are handled the same way as for Categorization (see 1872.404(b)). Since the validation process objective is a comprehensive review that includes an objective inter-comparison of the outcomes of individual categorizations with the records available to the Committee and with each other for balance, the emphasis on Committee appointments on detailed area expertise is reduced. It is good practice to include on the Steering Committee some qualified and experienced individuals with broad or different backgrounds who can provide a fresh perspective. OP and OGC shall participate in meetings of the Steering Committee.

(e) Steering Committee members are subject to the integrity provisions in sections 1872.104 and 1872.105; provisions regarding observers see 1872.401(e) also apply.

(f) The Steering Committee works from a comprehensive description of the AO and Evaluation plan provided by the Division Program AL, the Forms A, B, C, and any other Forms, and the report of the Categorization Committee.

(g) In the event that the Validation process goals stated in paragraphs (b)(1), (b)(2), and/or (b)(3) of this section are not achieved, the Steering chair shall notify the Division AL that the evaluation is not ready to go forward to Selection.

(h) The Steering Committee is not empowered to re-categorize proposals and does not have access to them. If it is unable based on the record available from the Categorization Committee proceedings to resolve an inconsistency or other inadequacy (see (b)(3) of this section), the Steering Committee Chair will lead the Steering Committee in documenting its concern. The Steering Committee Chair will then refer the issue to the Categorization Chair for that Committee to resolve the issue. The Categorization Chair has discretion on how to engage that Committee for this purpose, but it is good practice to reconvene the Committee in a meeting for significant or complex problems. The Categorization Committee shall respond to each identified concern in one of only three ways, in writing to the Steering Committee Chair:

(1) It can respond to a concern with a clarification without making changes;
(2) It can maintain its initial Categorization and provide a clarified rationale; or
(3) It can provide a new Categorization with a new rationale.

Only one iteration is permitted. The Steering Committee Chair consults the Steering Committee, and if it accepts the Categorization Committee response, it updates its own record accordingly. If a disjoint persists, the Steering Chair will lead the Steering Committee in updating its record with reasons for disagreeing with the final position of the Categorization Committee and this will be incorporated with the Categorization Committee's original and final Categorization and rationale and clarification (if any) into the Steering Chair's summary memorandum to the Selection Official.

(i) The Categorization Committee reconsideration action is final; there is no negotiation between the Categorization and Steering Committees.

(j) The Steering Committee chair will document the outcome of the Categorization Committee's response to the Steering Committee's request(s) for reconsideration. The Steering Committee chair's memorandum to the Selection Official will present the Categorization Committee's original categorizations and rationales, the Steering Committee's request for reconsideration of categorizations and rationales and basis for its request, and the Categorization Committee's final categorizations and rationales, including any clarification that the Categorization Committee provides for its decisions. Use of this information will fall within the broad discretion of the Selection Official in making selections (see 1872.503)

(k) *Products of the Validation process.*

The record of the Validation phase, which is input to the Accommodation, Recommendation, and Selection processes, consists of the following elements:

(1) Sign-in sheet, with a list of participating institutions, from the Steering Committee meeting serving as conflict of interest-free self-certification by participants;

(2) Summary memorandum from the Steering Committee Chair to the Selection Official certifying the process's integrity and compliance with policies and procedures, from solicitation though categorization. Any unresolved problems or outstanding exceptions (see 1872.405(h), (i), and (j)) are to be clearly noted with explanations;

(3) Final table of Categorizations and Categorization Rationales; and

(4) Minutes, reviewed and approved by the Steering Committee Chair and Directorate AL (if not the same).

1872.406 Accommodation.

(a) Accommodation is the analysis of engineering and operational compatibility of one or more instruments on a spacecraft bus or other host platform. This includes, for example, physical parameters like available power, volume, surface mounting space, thermal management, communications and computational resources, and mass and mass distribution, viewing geometry and operational considerations like spacecraft pointing and lines-of-sight, and any other operational constraints imposed on the integrated payload by the platform.

(b) Accommodation analyses can be conducted any time but findings are kept separated from the Assessment and Categorization processes and results.

(c) Management oversight of the Accommodation analyses is the responsibility of the sponsoring Division. However, the system and subsystem engineering expertise required for the necessary analyses can exceed that available within the Directorate. In this case, assistance can be obtained from a NASA Center or JPL technical staff. These personnel shall be briefed on the provisions of 1872.105, 1872.106, 1872.107, and 1872.302(c) and their management shall ensure implementation of these provisions.

(d) The accommodation analyses yield one or more complete candidate payloads, composed of instrument investigations with fully validated merit and risk that can be successfully carried and operated on the investigation spacecraft bus if selected.

(e) The AO shall describe the constraints and criteria to be used during accommodation.

1872.407 Variations in validation and accommodation.

(a) In some cases, the primary driver in assessing alternative total instrument complements for a payload will be optimizing integrated payload performance against investigation scientific or technical objectives, rather than meeting spacecraft resource and

operational limitations. In this case, the analysis of alternative configurations falls directly into the Recommendation phase (see 1872.502).

(b) In other cases, the interactions between these criteria can become very complex, e.g., in the case of a legacy platform design with unusually tight constraints. It may be necessary for Headquarters Division personnel to work together with firewalled Center staff to coordinate development of selection Recommendations with Accommodation analyses. The detailed process for these cases shall be tailored to the individual circumstances, in consultation with the OGC and the OP. The results of the Assessment and categorization processes, which are the principal gateways to potential selection for individual proposals, are not affected.

1872.408 Two-Step acquisitions.

(a) For some AO acquisitions, typically for medium and large complete flight investigations, a Two-step evaluation and recommendation/selection process is used. In these cases, NASA requires additional concept development to be carried out before deciding which of several investigations to continue beyond the Concept and Technology Development Phase (Phase A) into the Preliminary Design and Technology Completion Phase (Phase B) per NPR 7120.5. One or more proposed investigations are selected to begin formulation (see 1872.5); the AO acquisition process is considered Step-One. The Step-Two investigation concept studies are conducted on the same schedule for all selected investigations in order to support a final competitive continuation decisions ("down-selection").

(b) Per NPR 7120.5, the Two-Step work constitutes the Concept and Technology Development Phase (Phase A) for the selected investigation. The product of each Phase A study is a Concept Study Report (CSR). The CSR shall present the technical implementation of its investigation in sufficient detail to enable a definitive TMC analysis that includes a higher fidelity cost and schedule assessment and updated risk assessment. The CSR shall also revalidate the original science objectives and investigation science requirements, or, if they require amendment based on the detailed Phase A studies, revise them.

(c) For an investigation whose CSR does not present any modifications to the original proposal's science, exploration, or technology objectives and mission requirements, the Division Program AL will convene a Concept Study Review Panel with the scientific and technical expertise to assess both the Implementation Merit and Feasibility (Form B) and TMC Feasibility of each CSR, focusing on any deviations from findings of the Step-One Form B review and the results of the new, refined TMC analysis (Form C Factors). In this case, no review of intrinsic merit (Form A) is conducted.

(d) For an investigation whose CSR does present modifications to the science, exploration, or technology objectives or mission requirements, the Division Program AL shall in addition convene the original or other properly constituted science panel to reevaluate the proposal's intrinsic merit (Form A); alternatively, the Division Program AL may elect to have

the CSR Panel do so if it has sufficient subject matter breadth and depth. The CSR Panel's review for Forms B and C is the same as for (c) of this section.

(e) The results of the CSR reviews are used to validate or revise any Step-One Accommodation findings.

(f) The information derived from the CSR reviews is used by the sponsoring division to formulate and defend its final continuation (down-selection) recommendations for the Selection Official.

(g) A second Steering Committee action is not required; however, the Step-One Steering Committee or a repopulated Steering Committee may be convened to address specific concerns by the Directorate AL at his or her own discretion or at the request of either the sponsoring division or the Selection Official.

Subpart 1872.5—Recommendation, Selection, and Debriefing

1872.501 General.

(a) This phase encompasses the final steps leading to selection decisions and the subsequent debriefing of both unsuccessful proposers and those selected for awards, the latter handed off to the designated Program Office for implementation. At that point, the requirements of NPR 7120.5 go into effect for the duration of the investigation.

(b) The Division Program AL shall prepare, in advance of selection, a detailed timeline of the steps to be taken after the selection decisions are made.

1872.502 Recommendation.

(a) One or more options for selection shall be prepared by the sponsoring Division; these recommendations shall be based primarily on the categorizations, influenced by division programmatic considerations.

(b) The following are examples of programmatic factors that the sponsoring Division can apply in formulating specific recommendation(s) for consideration by the Selection Official:

(1) Accommodation constraints—see 1872.406(a).

(2) Budget—affordability, including the impact of alternatives on other Division objectives;

(3) Scientific balance—avoiding duplication of other investigations or filling gaps in the Division program portfolio;

(4) National policy—following stated Administration or Congressional guidance;

(5) Advisory Committee guidance—including the National Academies;

(6) Technology impact—benefits related to the impact of technology development or demonstration for future investigations;

(7) Other Agency goals—relation of scientific or technical objectives to those of other Divisions or Directorates; and

(8) International factors—opportunities for partnerships with foreign space programs, either existing commitments or prospective opportunities, and concomitant risks.

(c) *Product of the Recommendation Phase.*
The Division prepares a briefing to the Selection Official to be presented for his or her consideration. The briefing contains one or more highly recommended selections, complete with rationale for the recommendation(s) and outlining unique merits and any drawbacks for each recommended option. Any specific guidance or direction to proposers of recommended investigations, for use in the event of their selection, shall also be identified.

1872.503 Selection.

(a) The goal of this process is to determine which proposals will receive awards.

(b) The Selection Official may consult with other Agency officials, but retains sole authority for the selection. Results of the foregoing Evaluation and Validation phases shall be made available to the Selection Official prior to any selection decision.

(c) The OP and OGC shall concur upon the selection statement.

(d) In making a selection, the Selection Official shall clearly articulate in a written Selection Statement the following, for the record:

(1) Identify the investigations selected for implementation (one-step acquisitions) or further concept study (two-step acquisitions), including any partial selections or conditions to be levied on selected proposers;

(2) Identify the investigations not selected;

(3) Identify rationales for selections and non-selections, including especially rationales for any cases where more highly categorized investigations are displaced by lower ones;

(4) Where applicable, designate the Program Office to oversee the implementation;

(5) As applicable, a statement that no further competition is required (see 1872.306 for awards to NASA proposers); and

(6) Where applicable, state whether offered cooperative contributions are accepted.

(e) Selection and non-selection letters shall be prepared by the Division Program AL for signature by the Selection Official. The letters shall be concurred upon by the OP and OGC. Letters of selection shall address the following:

(1) Any directed substantive changes from the investigation originally proposed;

(2) The nature of the selection, i.e., whether it should be considered final or provisional, contingent on additional hardware specification or cost definition or other conditions;

(3) Identification of the Program Office to assume oversight responsibility for execution of the investigation; and

(4) Where applicable, indication that a foreign partner's participation is accepted and that an agreement for the program will be arranged between the Office of International and Interagency Relations and the foreign partner organization that endorsed the proposal.

(f) The Division Program AL shall provide a draft press release, coordinated with the Office of Communications, announcing the result of the solicitation and selection.

(g) The Division Program AL is responsible for managing the timely completion of these products and other requirements of the integrated selection timeline (see 1872.501(b)).

1872.504 Award, notification of proposers, and debriefing.

(a) It is the responsibility of the Division Program AL to prepare letters notifying proposers of their selection or non-selection, obtain the Selection Official's signatures, and issue them promptly in accordance with the selection timeline (see 1872.501(b)).

(b) Subsequent to the selection decision(s) by the Selection Official, it is the responsibility of the Division Program AL to work with the OP to initiate an Administrator's Notification of Significant Contract Action (ANOSCA) or a public announcement, depending on the overall value of the proposed contract action(s), in accordance with 1805.303-71. It is the responsibility of the procurement organization at the Center Program Office responsible for the selected investigations to award contract(s). Further, for selected Government PIs, it is the responsibility of that PI's organization to award any resulting contracts.

(c) Unsuccessful proposers shall be offered in their non-selection letter an oral debriefing on the evaluation and subsequent decision about their proposal. It is a good practice to offer debriefings also to successful proposers as the evaluations contain feedback that will be valuable in the implementation of the investigation.

(1) The primary purposes of the debriefing are to convey to the proposers the rationales for the decisions on their proposals and to demonstrate that the evaluation and selection processes were thorough, expert, and fair.

(2) A specific and sufficient time limit shall be set in advance for each debriefing.

(3) The Division Program AL is responsible for conducting the debriefings. It is a good practice to have the TAM in attendance to provide any clarifications required concerning the TMC reviews. Other NASA personnel who do not have any conflicts of interest, who can contribute materially to the debriefing can be invited by the Division Program AL to participate. Other observers, except the Directorate AL, are not permitted.

(4) The Division Program AL may prepare written debriefing materials for the debriefing. Such written debriefing materials will include (i) a brief description of the evaluation

(assessment, categorization, validation, accommodation (if applicable)) and selection process with sufficient detail to convey that all proposals received a fair and competent review; (ii) the key findings from all evaluation forms that were used as the basis for the selection or non-selection decision, and (iii) the signed selection statement. Properties of other proposals or outcomes of their reviews shall not be briefed or discussed.

(5) A limit shall be set to the number of attendees from the proposal team.

(6) Other than a record of attendees, written records shall not be kept by NASA of the debriefing. The written debriefing materials are the notes for the debriefing, and the debriefing content shall follow closely these written materials. Materials provided to attendees shall be provided in advance (e.g., via NSPIRES, two days or more before the meeting).

(7) No recording shall be permitted. For telecon debriefings, a good practice is for the proposer to provide the dial-in line and access to it so the proposer is responsible for its security.

(8) Whether or not other written debriefing materials are provided, a hardcopy or electronic copy of the Selection Official's selection statement shall be given to the proposal Principal Investigator.

(9) Care shall be taken that all debriefings share the same structure and corresponding information for all proposals.

APPENDIX A
ENTERPRISE PROCUREMENT STRATEGIES

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APPENDIX A
ENTERPRISE PROCUREMENT STRATEGIES

[PN 19-12]

A-100 Purpose.
This appendix outlines the enterprise procurement strategies for institutional related services above the simplified acquisition threshold unless otherwise stated. These enterprise procurement strategies facilitate a more tactical use of critical resources, thereby allowing the Agency to maximize interdependencies and reduce redundancies.

A-101 Definitions.
As used in this appendix-

"Buying locations" means the cognizant procurement office located at a field installation responsible for the gathering of agency requirements, analyzing market capabilities and conditions, developing acquisition strategies, advertising, awarding, and typically administering resulting contract(s) related to the assigned enterprise procurement strategy. Requirements Owners shall work through the buying locations identified for each enterprise procurement strategy in order to procure the requirements. Point of contact information for each enterprise procurement strategy is contained in the Procurement Portfolio table.

"Mandatory Contract" means a contract that must be used if the instant requirements are covered within the statement of work of that contract. Additional information on the mandatory NASA contracts is available on the Office of Procurement Strategic Sourcing Searchable Repository.

A-102 Enterprise Procurement Strategies.

A-102.1 Acquisition of helium, hydrogen, nitrogen, oxygen, other propellants and aerospace fluids.

(a) Buying Location. The Kennedy Space Center (KSC) Office of Procurement (OP) is the buying location for helium, hydrogen, nitrogen, oxygen, other propellants and aerospace fluids. The KSC OP works in conjunction with the KSC Propellants and Life Support (KPLS) branch which has responsibility for the acquisition and management of aerospace fluids that are used across the agency.

(b) KSC Aerospace Fluids Acquisition and Management supports all NASA Centers with consolidated contracts for supplying:

(1) Liquid hydrogen;

(i) Bulk delivery (tanker quantities, more than 1,000 gallons)

(2) Liquid helium;

(i) Bulk delivery (tanker quantities) and some non-bulk (30-liter or larger dewars) if required on a regular basis

(3) Gaseous helium;
(i) Bulk delivery (compressed gas trailers)
(4) Liquid nitrogen;
(i) Bulk delivery (tanker quantities)
(5) Liquid oxygen; and
(i) Bulk delivery (tanker quantities, more than 1,000 gallons)
(6) Liquefied natural gas/methane
(i) Bulk delivery (tanker quantities, more than 1,000 gallons)

(c) Specialty gases, gas or liquid mixtures, non-bulk requirements (small quantities), one-time purchases, and fluids that are not common to multiple Centers are not required to be purchased through the consolidated aerospace fluids acquisition and management support contracts.

(d) NASA Centers will be delegated authority for issuing and administering individual delivery orders. Support points of contact and additional information can be found here.

(e) Hypergolic propellants (including hydrazine, mono-methyl hydrazine, and nitrogen tetroxide) and Rocket Propellant 1 (RP-1) are not procured by the KSC OP. Instead, these propellants are provided via sole source contracts administered for all Federal Government Agencies by the Defense Logistics Agency (DLA) Energy. The KPLS Branch is available to provide requirements owners with guidance, technical consultation, and also is available to serve as a liaison to DLA for these specific propellants.

A-102.2 Information Technology Services.

(a) Buying Location. The Information Technology Procurement Office and the NASA Shared Services Center (NSSC) are the buying location for IT hardware, software, and services.

(b) The contracts located via the following Acquisition Navigator website link are mandatory NASA and other contract vehicles and shall be utilized for IT hardware, software, and services.

[PN 23-02, 24-09]

A-102.3 Protective Services.

(a) Buying Locations. The Kennedy Spaceflight Center (KSC) Office of Procurement (OP) and the Goddard Spaceflight Center (GSFC) OP are the buying locations for protective services requirements.

(1) KSC OP is the buying location drafting, awarding, and administering the IDIQ contract(s) that will support the South Region requirements. The South Region includes KSC, Johnson Space Center (JSC), Marshall Space Flight Center (MSFC), Stennis Space Center (SSC), and Ames Research Center (ARC), as well as all nearby component facilities, including but not

limited to White Sands Test Facility (WSTF) and White Sands Complex (WSC), and Michoud Assembly Facility (MAF). Each center will award and administer task orders for requirements at their locations.

(2) GSFC OP is the buying location drafting, awarding, and administering the IDIQ contract(s) that will support the East Region requirements. The East Region includes Glenn Research Center (GRC), NASA Headquarters (HQ), Langley Research Center (LaRC), and Armstrong Flight Research Center (AFRC), as well as all nearby component facilities, including but not limited to the Armstrong Test Facility (ATF) (formerly Plum Brook Station (PBS)). Each center will award and administer task orders for requirements at their locations.

(b) When acquiring protective services,

(1) The requiring office (i.e., Center Office of Protective Services) shall coordinate with the Headquarters, Office of Protective Services, regarding the technical portions of the solicitation, as early as possible in the acquisition planning process. The Assistant Administrator for Protective Services is the approving official, unless otherwise delegated, for all technical portions of the solicitation.

(2) The buying location must –

(i) Award resulting contracts on a firm-fixed-price basis; and

(ii) Set-aside these requirements for a small business category, pursuant to the procedures prescribed at FAR Subpart 19.5. Additional requirements may be included in any acquisition for protective services provided the total combined requirement is set-aside for small business category.

(c) The contracting officer must satisfy all requirements through the following mandatory contracts:

(1) South Region – The NASA Protective Services Contract – South Region (NPSC-SR), 80KSC022DA001; or

(2) East Region – The NASA Protective Services – East Region (NPS-ER) contract, PIID # 80GSFC23DA004.

[PN 22-10, PN 23-02, PN 24-07]

A-102.4 Acquisition Support Services.

(a) Buying Location. The NASA Shared Services Center (NSSC) OP is the buying location for acquisition support services.

(b) The Agency-Wide Acquisition Support Services (AWASS) contract (80NSSC19D0002) is the mandatory use contract for the following acquisition support services-

(1) contract/grant/cooperative agreement closeout,

(2) requirements document development support,

(3) administrative support,

(4) policy support services,

(5) acquisition systems and reporting services,

(6) procurement operation services,

(7) source selection services, or
(8) cost/pricing support services.

A-102.5 Subscription Purchases.

(a) Buying Location. The NSSC OP is the buying location for subscription purchases.

(b) The requiring office shall contact the NSSC OP to procure or renew any subscriptions to periodical literature, including electronic journals, such as the following:
(1) American Institute of Aeronautics and Astronautics (AIAA),
(2) Aviation Weekly,
(3) Clarivate Web of Science,
(4) Elsevier *ScienceDirect*,
(5) Galaxie,
(6) IEEE,
(7) Nature/Springer (Nature Journals Only),
(8) SPIE,
(9) Taylor & Francis ENGnet,
(10) Wiley,
(11) National Journal,
(12) CQ Roll Call, Inc.,
(13) Westlaw, or
(14) LEXIS NEXIS.

A-102.6 Human Capital Services.

(a) Buying Location. The NSSC OP is the buying location for human capital services.

(b) The NASA Enterprise-Wide Human Capital Support Services (NEHCSS) multiple award contracts (80NSSC23DA001, 80NSSC23DA002, and 80NSSC23DA003) are the mandatory use contracts for the following human capital services:
(1) Organization and leadership development/training,
(2) Workforce strategy and planning,
(3) Benefits management,
(4) Human resources support,
(5) Diversity and Equal Opportunity support,
(6) Alternative dispute resolution, and
(7) Professional counseling/coaching.

[PN 23-19]

A-102.7 Aircraft Operational Support Services.

(a) Buying Location. The AFRC OP and JSC OP are the buying locations for aircraft operational support services, which includes maintenance, parts, and repair for aircraft (federal

aircraft and unmanned aircraft systems as defined in 1847.200-70) and aircraft components; flight aircrew support and flight aircrew training.

(b) Contracting officers shall use the following mandatory contracts to satisfy all in-scope requirements for aircraft operational support services:

(1) 80AFRC20D0003 – Aircraft Operations Support (AOS)

(2) 80AFRC18D0004 – Aircraft Flight Crew Support (AFCS)

(3) 80HQTR20D0003 – Aircrew Flight and Maintenance Training Services

(4) 80JSC023DA017 – CompreHensive Aircraft Readiness, Lifecycle, Engineering, and Support (CHARLES)

(5) 80JSC021DA004, 80JSC021DA006, 80JSC021DA009, 80JSC021DA011 - 80JSC021DA014 – Specialized Engineering, Aeronautics, and Manufacturing (SEAM) II

(c) The buying locations may delegate the authority to issue and administer individual orders to other NASA Centers. In accordance with 1847.200-71, requiring offices shall obtain concurrence from the cognizant Center Flight Operations Office prior to initiating orders for aircraft operational support services.

[PN 2410]

A-102.8 Financial Support Services.

(a) Buying Locations. The GSFC OP and MSFC OP are the buying locations for financial support services requirements, including accounting services and resources/financial management requirements.

(1) The GSFC OP will support requirements from the GSFC, HQ, and LaRC.

(2) The MSFC OP will support requirements from the ARC, AFRC, GRC, JSC, KSC, MSFC, and SSC.

(b) The GSFC Program Analysis and Control (PAAC) contract (80GSFC20D0001) is the mandatory use contract for the following requirements procured by the GSFC, HQ, or LaRC:

(1) Resources/Financial Management requirements including:

(i) budget formulation

(ii) budget execution

(iii) variance analysis

(iv) reporting

(2) Accounting Services requirements including:

(i) general accounting

(ii) NASA accounting system operations support

(iii) system upgrades

(iv) monthly invoices

(v) vendor inquires

(vi) travel

(vii) timecards

(viii) payroll system
(ix) reimbursable work packages
(x) dunning notices and monthly bills
(xi) records archiving and retrieval
(xii) performance summary reports
(xiii) special projects

(c) Upon award, the MSFC Financial Services contract will be the mandatory use contract for financial support services requirements procured by the ARC, AFRC, GRC, JSC, KSC, MSFC, or SSC.

(d) If contracting officers are unable to satisfy a requirement for financial support services from the respective mandatory use contract for their center listed above, contracting officers, in coordination with the requiring office, shall obtain concurrence from the financial support services Enterprise Resource Manager (ERM) and gain approval from the financial support services Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement prior to satisfying the requirement under a different contract vehicle.

(e) NASA Centers will be delegated authority for issuing and administering individual delivery orders.

A-102.9 Project Planning and Control Services.

(a) Buying Locations. The GSFC OP and MSFC OP are the buying locations for Project Planning and Control Services (PP&C) services requirements, including cost estimating, cost assessment, scheduling, and earned value management requirements.

(1) The GSFC OP will support requirements from the GSFC, HQ, and LaRC.

(2) The MSFC OP will support requirements from the ARC, AFRC, GRC, JSC, KSC, MSFC, and SSC.

(b) The GSFC Program Analysis and Control (PAAC) contract (80GSFC20D0001) is the mandatory use contract for the following requirements procured by the GSFC, HQ, or LaRC:

(1) Planning and Scheduling/Earned Value Management requirements including:
(i) Decision Making and Forecasting
(ii) Consistency and Compliance
(iii) Schedules
(A) Project Schedules
(B) Integrated Master Schedules
(C) Schedule Management Plan
(D) Correlate Schedules with Technical and approved Budgets
(E) Schedule Compliance
(F) Schedule Analysis
(G) Change Documentation

(iv) Earned Value Management (EVM)
(A) EVM Planning and Implementation
(B) Expert Advice and Support
(2) Documentation Management
(i) Control, Storage, Dissemination and Tracking of Project Documentation
(ii) Data Management
(3) Configuration Management
(i) Configuration Management System Compliance
(ii) Existing Programs Support
(iii) CM Plan
(iv) Configuration Control Requests

(c) Upon award, the MSFC Consolidated Program Support Services (CPSS) contract will be the mandatory use contract for PP&C services requirements procured by the ARC, AFRC, GRC, JSC, KSC, MSFC, or SSC.

(d) If contracting officers are unable to satisfy a requirement for PP&C services from the respective mandatory use contract for their center listed above, contracting officers, in coordination with the requiring office, shall obtain concurrence from the PP&C Enterprise Resource Manager (ERM) and gain approval from the cognizant PP&C Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement prior to satisfying the requirement under a different contract vehicle.

(e) NASA Centers will be delegated authority for issuing and administering individual delivery orders.

A-102.10 Custodial Services.

(a) Buying Location. The Glenn Research Center (GRC) Office of Procurement (OP) is the buying location for custodial services.

(b) The requiring office shall contact the GRC OP to procure custodial services, which include the following:

(1) Janitorial services
(2) Building cleaning services
(3) Cleaning offices
(4) Deodorizing services
(5) Disinfecting services
(6) Housekeeping services
(7) Restroom cleaning services
(8) Washroom sanitation services

(9) Window cleaning services
(10) Trash/recycling collection and removal
(11) Restocking – paper towels, toilet paper, soap, sanitary napkin dispensers

(c) The buying location must-
(1) Award resulting contracts/task orders on a firm-fixed-price basis; and
(2) Set-aside these requirements for a small businesses category, to include 8(a) and Hub Zone, pursuant to the procedures prescribed at FAR Subpart 19.5;

(d) Exception. Custodial services may be obtained through:
(1) The AbilityOne program (The buying location at (a) still applies.); or
(2) An interagency agreement with a tenant organization. Interagency agreements may be issued by the local center.
(3) All other exceptions must be approved through the deviation process at NFS 1801.4.

(e) The requiring office shall:
(1) Coordinate with the Headquarters, Office of Strategic Infrastructure (OSI), regarding the technical portions of the solicitation, as early as possible in the acquisition planning process. The Assistant Administrator for OSI is the approving official, unless otherwise delegated, for all technical portions of the solicitation.
(2) Provide a certified Contracting Officer's Representative (COR) for the proposed contract/task order.

(f) Transition. All existing contracts that provide custodial services may exercise existing options without additional approval. Options must currently exist on the contract and not be a part of a request to extend the contract beyond its original term.

[PN 24-10]

A-102.11 Grounds Maintenance Services.

(a) Buying Location. The Langley Research Center (LaRC) is the buying location for grounds maintenance services.

(b) The requiring office shall contact the LaRC OP to procure grounds maintenance services, which include the following:

(1) Grounds maintenance services
(2) Landscaping services
(3) Fertilizing services
(4) Lawn care services
(5) Lawn mowing services
(6) Lawn mulching services

(7) Lawn seeding services
(8) Lawn spraying services
(9) Maintenance of plants and shrubs in buildings
(10) Mowing services
(11) Ornamental tree and shrub services
(12) Plant maintenance services
(13) Pruning services
(14) Seasonal property maintenance services (i.e., snow plowing in the winter, landscaping during other seasons)
(15) Snow plowing services
(16) Sod laying services
(17) Tree and brush trimming
(18) Tree removal services
(19) Tree surgery services
(20) Weed control and fertilizing services

(c) The buying location must-

(1) Award resulting contracts/task orders on a firm-fixed-price basis; and Set-aside these requirements for a small businesses category, to include 8(a) and Hub Zone, pursuant to the procedures prescribed at FAR Subpart 19.5;

(d) Exceptions. Grounds maintenance services may be obtained through-

(1) The AbilityOne program (The buying location at (a) still applies.); or
(2) An interagency agreement with a tenant organization. Interagency agreements may be issued by the local center.
` (3) All other exceptions must be approved through the deviation process at NFS 1801.4.

(e) The requiring office shall:

(1) Coordinate with the Headquarters, Office of Strategic Infrastructure (OSI), regarding the technical portions of the solicitation, as early as possible in the acquisition planning process. The Assistant Administrator for OSI is the approving official, unless otherwise delegated, for all technical portions of the solicitation.
(2) Provide a certified Contracting Officer's Representative (COR) for the proposed contract/task order.

(f) Transition. All existing contracts that provide grounds maintenance services may exercise existing options without additional approval. Options must currently exist on the contract and not be a part of a request to extend the contract beyond its original term.

A-102.12 Logistics Services.

(a) Buying Location. The Offices of Procurement at each NASA Center will procure these services. All local Requirement Development Teams (RDTs) shall coordinate and obtain concurrence from the Enterprise Requirements Manager (ERM) in the Office of Strategic

Infrastructure (OSI) for the development of requirements, and consult with the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement and the MSFC Office of Procurement to ensure procurement strategy alignment as early as possible in the acquisition planning process.

(b) Core Logistics services shall include the following:

(1) Supply and Materials management

(2) Equipment Management

(3) Disposal Operations

(4) Life cycle logistics

(5) Transportation management

(6) Mail management

(c) The buying location shall–

(1) Award resulting contracts/task orders on a firm-fixed-price basis; however, the buying location can determine an alternative contract type if firm fixed price is not determined appropriate for the requirement;

(2) Set-aside these requirements for a small businesses category, to include 8(a) and HUBZone, pursuant to the procedures prescribed at FAR Subpart 19.5;

(3) Conduct Full and Open Competition only in the event a small business set-aside cannot be justified following the NASA Form 1787 Market Research process;

(4) For all logistics follow-on contracts, any non-logistics PSL requirements under existing contracts must be removed and inserted under the appropriate PSL and coordinated with the appropriate Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement and ERM to ensure they are incorporated under the appropriate contract/procurement.

(5) For any non-logistics requirements, the Center Requirement Offices must determine where the requirement will reside. If the Center Requirement Office selects the logistics contract for these non-logistics requirements, coordination with the logistics ERM must occur.

(d) The requiring office shall-

(1) Appoint the OSI Logistics ERM and alternate ERM as a technical advisor on the RDT; and

(2) Utilize the Agency Logistics performance work statement (PWS) baseline and ensure all unique center logistics requirements are captured and incorporated into the requirements document.

[PN 23-02]

A-102.13 Construction.

(a) Buying locations. (1) The AFRC OP, GRC OP, and SSC OP are the buying locations for construction projects over $1 million, repairs (as defined in NASA Procedural Requirement (NPR) 8831.2F, Facilities Maintenance and Operations Management), and/or planned repairs (as

defined in NPR 8831.2F), totaling more than $10 million, and all other construction projects not covered under paragraph (a)(2).

(2) Individual Procurement offices are authorized as the buying location for construction projects $1 million or less, and repairs (as defined in NASA Procedural Requirement (NPR) 8831.2F, Facilities Maintenance and Operations Management), and/or planned repairs (as defined in NPR 8831.2F), totaling less than $10 million.

(b) All buying locations shall set-aside construction (as defined in FAR 2.101 including, but not limited to, construction described in any portion of this NFS Exhibit A-102.13, Construction) requirements greater than the Simplified Acquisition Threshold (SAT) up to $5M, for the 8(a) Program.

(c) The contracting officer must satisfy all requirements through the following contract vehicles, including when the construction requirements are embedded within other requirements:

(1) The following NASA-wide contracts:

(i) Stennis Space Center Southeast Regional Multiple Award Construction Contract (MACC) II, awarded under PIIDs 80SSC018D0001 through 80SSC018D0024.

(ii) Armstrong Flight Research Center Western Regional MACC. The PIIDs used for these awards all start with 80AFRC19D. The last four digits of each PIID involved are 0003, 0004, 0005, 0006, 0008, 0009, 0010, 0011, 0012, 0014, 0015, 0016 and 0017.

(iii)Glenn Research Center Northeast Regional MACC, awarded under PIIDs 80GRC020D0007 through 80GRC020D0014.

(2) Interagency agreements including:

(i) U.S. Army Corps of Engineers Facility Reduction Program (FRP) Interagency Assisted Acquisition Agreement (IAA, listed on the General Services Administration (GSA) Acquisition Gateway website); and

(ii) Memorandum of Agreement (MOA) between the National Aeronautics and Space Administration and the U.S. Army Corps of Engineers (USACE) for construction management and design services provided by USACE. The agreement became effective February 17, 2022. The agreement's Period of Performance began on February 17, 2022, and ends on February 16, 2027.

(3) Government-wide contracts and contracts awarded by other agencies including:

(i) GSA Schedule contracts;

(ii) Any other government-wide contract; and

(iii) Any contract awarded by another agency that is not a governmentwide contact.

(d) NASA Centers are delegated authority for issuing and administering individual delivery orders against NASA-wide contracts.

[PN 23-18, PN 24-10]

A-102.14 Architect-Engineer Services Not Associated with Environmental Restoration.

(a) Buying locations. (1) The AFRC OP, GRC OP, and KSC OP are the buying locations for non-environmental restoration architect-engineer services associated with construction projects over $1 million, repairs (as defined in NASA Procedural Requirement (NPR) 8831.2, Facilities Maintenance and Operations Management), and/or planned repairs (as defined in NPR 8831.2), totaling more than $10 million, and all other non-environmental restoration architect-engineer services associated with construction projects not covered under paragraphs (a)(2) and (a)(3).

(i) The AFRC OP will support requirements from the AFRC and ARC.

(ii) The GRC OP will support requirements from the GRC, GSFC, and LaRC.

(iii) The KSC OP will support requirements from the JSC, KSC, MSFC, and SSC.

(2) Individual center OPs are the buying locations for non-environmental restoration architect-engineer services associated with construction projects $1 million or less, and repairs (as defined in NASA Procedural Requirement (NPR) 8831.2, Facilities Maintenance and Operations Management), and/or planned repairs (as defined in NPR 8831.2), totaling less than $10 million.

(3) The SSC OP is the buying location for requirements placed against the Real Property Master Planning (RPMP) support contract.

(b) The contracting officer must satisfy all requirements through the following contract vehicles:

(1) The following NASA-wide contracts:

(i) Glenn Research Center Northeast Regional Architect-Engineer Services – All eight contract PIID numbers start with "80GRC019D00##". Each contract PIID number ends with one of the following numbers: 02, 04, 05, 06, 07, 08, 09, and 13;

(ii) Kennedy Space Center Southeast Regional Architect-Engineering Services (SERAE) – awarded under PIIDs 80KSC021DA008 through 80KSC021DA016;

(iii) Stennis Space Center Real Property Master Planning (RPMP) support – awarded under PIIDs 80SSC019D0004, 80SSC019D0005, 80SSC019D0006, and 80SSC019D0007;

(2) Memorandum of Agreement (MOA) between the National Aeronautics and Space Administration and the U.S. Army Corps of Engineers (USACE) for construction management and design services provided by USACE. The agreement became effective February 17, 2022. The agreement's Period of Performance began on February 17, 2022, and ends on February 16, 2027.

(3) Government-wide contracts and contracts awarded by other agencies including:

(i) GSA Schedule contracts;

(ii) Any other government-wide contract; and

(iii) Any contract awarded by another agency that is not a government-wide contact.

[PN 24-07, PN 24-10]

A-102.15 Environmental Restoration and Associated Architect-Engineer and Construction Services.

(a) Buying location. The KSC OP is the buying location for environmental restoration and associated Architect-Engineer Services. All NASA Centers are delegated authority for issuing and administering individual task orders against the contracts and agreements identified in paragraph (c).

(b) Definitions. As defined in Appendix A of NPR 8553.1, NASA Environmental Management System, except as follows:

(1) Environmental: As defined in FAR 23.001; and

(2) Restoration – see NPR 8590.1, Environmental Compliance and Restoration Program.

(c) The Contracting Officer must satisfy all requirements through the following contract vehicles:

(1) Kennedy Space Center's (KSC's) multiple award NASA-wide Environmental Restoration and Compliance Contract (NERCC), PIID numbers 80KSC024DA001, 80KSC024DA002, 80KSC024DA003, 80KSC02DA004, and 80KSC024DA005;

(2) Memorandum of Agreement (MOA) Between the National Aeronautics and Space Administration and the U.S. Army Corps of Engineers (USACE) for construction management and design services provided by USACE including, but not limited to, environmental restoration as well as hazardous and toxic materials removal. The agreement's Period of Performance began on February 17, 2022 and ends on February 16, 2027;

(3) The following center-specific contracts limited to the following locations:

(i) 80GSFC21CA008, Environmental Management Services for Goddard Space Flight Center and Wallops Flight Facility;

(ii) 80JSC023DA013 – Johnson Space Center's White Sands Test Facility Environmental Compliance Operations 3 (ECO3) contract; and

(iii) 80MSFC18D0005 - MSFC's contract for Architect- Engineering Services at Santa Susana Field Laboratory (SSFL)

(4) The following non-NASA procurement instruments:

(i) U.S. Army Corps of Engineers Facility Reduction Program (FRP) Interagency Assisted Acquisition Agreement (listed on the Acquisition Gateway website);

(ii) GSA Schedule contracts;

(iii) GSA OASIS contracts and OASIS Small Business;

(iv) Any other government-wide contract; or

(v) Any contract awarded by another agency that is not a government-wide contact.

(d) Transition: The following NASA awarded contracts may exercise existing options without additional approval. Options must currently exist on the contract or BPA involved and not be a part of a request to extend the contract or BPA beyond its original term. This applies to:

(1) All existing NASA awarded contracts listed in either subparagraphs (c)(3)(i), (c)(3)(ii), or (c)(3)(iii) above; and

(2) Any NASA awarded BPA or contract not listed in this NFS Appendix A-102.15 that provides environmental restoration services.

[PN 24-07, PN 24-10]

A-102.16 Environmental Compliance and Associated Operations and Maintenance.

(a) Buying location. Each center will serve as the buying location for its own requirements for environmental compliance and associated operations and maintenance services. NASA Centers are delegated authority for issuing and administering Interagency Agreements (including Interagency Acquisition Agreements), and individual task orders against the contracts and agreements identified in paragraph (c) of this section.

(b) Definitions. Unless otherwise noted below, all terms are as defined in Appendix A of NASA Procedural Requirements (NPR) 8553.1, NASA Environmental Management System:

(1) Environmental – As defined in FAR 23.001

(2) Environmental Compliance – Conformity with all compliance obligations. This includes all corrective actions that do not fall under the definition of "restoration" in NFS Appendix A-102.15. For the purposes of this PSL, environmental compliance includes, but is not limited to:

i) Pollution prevention;

ii) Environmental mitigation of an environmental event that is either happening nor or anticipated to happen in the future; and

iii) The following services when associated with environmental compliance:

(A) Operations and maintenance services;

(B) Architect-engineer services (as defined in FAR 2.101 with further commentary at FAR 36.601-4); and

(C) Permitting

(c) The contracting officer must satisfy all requirements through the following contract vehicles, listed in order of preference:

(1) Memorandum of Agreement (MOA) Between the National Aeronautics and Space Administration and the U.S. Army Corps of Engineers (USACE) for construction management and design services provided by USACE including, but not limited to, environmental restoration as well as hazardous and toxic materials removal. The agreement became effective February 17, 2022. The agreement's Period of Performance began on February 17, 2022 and ends on February 16, 2027;

(2) Kennedy Space Center's (KSC's) multiple award NASA-wide Environmental Restoration and Compliance Contract (NERCC), PIID numbers 80KSC024DA001, 80KSC024DA002, 80KSC024DA003, 80KSC02DA004, and 80KSC024DA005;

(3) NNS15AA01C, Stennis Space Center/Michoud Assembly Facility NASA-wide Synergy-Achieving Consolidated Operations and Maintenance (SACOM) contract.

(4) The following are Center-specific contracts limited to the following locations:

(i) 80GSFC21CA008, Environmental Management Services for Goddard Space Flight Center and Wallops Flight Facility;

(ii) 80JSC023DA013, Johnson Space Center's White Sands Test Facility Environmental Compliance Operations (ECO3) contract.

(5) The following MSFC Santa Susana Field Laboratory (SSFL) contracts:

(i) 80MSFC20C0039 – Utilities, Contingency and infrastructure Services contract;

(ii) 80MSFC20C0033 – California Mandated Regulatory Oversight Services contract.

(6) Government-wide contracts and contracts awarded by other agencies including:

(i) GSA Schedule contracts;

(ii) GSA OASIS contracts;

(iii) Any other government-wide contract; and

(iv) Any contract awarded by another agency that is not a government-wide contract.

(d) Transition: The following NASA-awarded contracts may exercise existing options without additional approval. Options must currently exist on the contract or BPA involved and not be a part of a request to extend the contract or BPA beyond its original term. This applies to:

(1) All existing NASA awarded contracts listed in either subparagraphs (c)(3) and (c)(4) above; and

(2) Any NASA awarded BPA or contract not listed in this NFS Appendix A-102.16 that provides environmental compliance services.

[PN 24-07, PN 24-10]

A-102.17 Communication Services.

(a) Buying Location. The KSC OP is the buying location for communication services.

(b) The requiring office shall contact the KSC OP to procure communication services, such as the following:

(1) Strategic Planning and Integration, which includes Strategic Communications, Communications Coordinating Council, Communications Metrics Analysis, Communications Policy Analysis, Strategic Alliances & Partnerships, NASA Brand Management, NASA Style & Graphics Standards, NASA Digital Services Council, Communications Technology Leadership;

(2) News and Multimedia, which includes Media Relations, Communications Issue Management, Film & Documentary Support, Apps, Digital Media Distribution, Websites, Social Media, External Television & Streaming Broadcast Content and Programming, Audio, Video and

Animation Production, Photojournalism, Internal Communications, Executive Communications, Public Inquiries, Public Information Products;

(3) Public Engagement, which includes Exhibits Program, Artifacts Program, Protocol, Guest Operations, Speaking Engagements, Astronaut Appearances, Public Engagement Events, Facility Tours for Public, Art Program Management, External Relations;

(4) Cross-cutting Functions, which includes FOIA, History, Historical Archives.

(c) White Sands Test Facility is excluded.

(d) The buying location shall –

(1) Award resulting contracts/task orders on a firm-fixed price basis to the maximum extent practicable;

(2) Conduct Full and Open Competition;

(3) Set acquisitions aside, in total or in part, for exclusive competitive participation by small businesses to include 8(a) participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns shall be at least 50% of the locations for these requirements.

(4) Allow for the on-ramp of other activities as existing contracts/task orders end.

(e) The requiring office shall –

(1) Coordinate with Headquarters, Office of Communications (OCOMM), regarding the technical portions of the solicitation, as early as possible in the acquisition planning process. The Assistant Administrator for OCOMM is the approving official for all technical portions of the solicitation.

(2) Provide a certified Contracting Officer's Representative (COR) for the proposed contract/task order.

(f) Transition. All existing contracts that provide communication support services may exercise existing options in accordance with PIC 1801.

A.102-18 OSTEM Services

(a) Buying Location. NSSC Office of Procurement (OP) is the buying location for NASA Enterprise-Wide OSTEM Support Services, which includes:

(1) NASA Internships and Fellowships
(2) Awards and Grants Support
(3) NASA STEM Content and Products
(4) NASA STEM Engagement Recruitment
(5) Contract Management and Administration
(6) NASA Internships and Fellowships Support
(7) NASA Workforce and Career Learning Experiences
(8) NASA K-12 STEM Engagement

(9) NASA K-16 Educator Professional Development
(10) NASA K-12 and Collegiate Challenges and Competitions
(11) NASA Institutional Support for Research and Development

(b) The contracting officer must satisfy all requirements through the mandatory use contract: 80NSSC22DA010 – NASA Science, Technology, Engineering, and Mathematics (NSTEM) contract.

(c) All existing contracts and new orders that include OSTEM services shall be sent to the designated NSTEM COR for review to determine if the work is in-scope and can be moved under the NSTEM contract.

(d) The requiring office shall -

(1) Coordinate with Headquarters, Office of OSTEM, regarding the technical portions of the solicitation, as early as possible in the acquisition planning process. The Assistant Administrator for OSTEM is the approving official for all technical portions of the solicitation.

(2) Provide a certified Contracting Officer's Representative (COR) for the proposed contract/task order.

[PN 23-19]

(e) Transition. All existing contracts and new orders that include OSTEM Core services should be reviewed to determine if OSTEM work can be moved under agency-wide contracts for federal contracts for CORE OSTEM work.

A-102.19 Fire Services [for Protective Services, see A-102.3]

(a) Buying Location. Kennedy Space Center (KSC) OP is the buying location for fire services requirements. Centers will award and administer task orders for requirements at their location.

(b) The following Centers and component facilities must satisfy all fire service requirements through the NASA Fire Services Contract (NFSC), PIID #80KSC022DA002: KSC, Ames Research Center (ARC), Wallops Flight Facility (WFF), and Stennis Space Center (SSC).

(c) For White Sands Test Facility (WSTF), fire dispatcher services requirements must be met through KSC's NFSC contract. All other fire services may be met either through the NFSC or the Johnson Space Center (JSC) Test, Evaluation, and Support Team 3 contract, PIID # 80JSC022DA003.

(d) The remaining Centers and component facilities will obtain their fire requirements through municipal or interagency fire services.

[PN 24-07]

A-102.20 Facilities Operations & Maintenance Services.

(a) Buying locations. The Offices of Procurement at each NASA Center will procure these services.

(b) Common Facilities Operations and Maintenance Services.

(1) Maintenance
(2) Operations
(3) Roads
(4) Service Requests
(5) Facilities Engineering Support
(6) Non-Construction of Facilities (CoF) level Construction/Renovation Repair.

(c) Specialized Operations and Maintenance service. Requirements that do not fit within the common/core services identified in paragraph (b) can be procured upon approval of the ERM for Facilities Operations and Maintenance.

A-102.21 Safety and Mission Assurance (SMA) Support Services

The objectives of the NASA Safety Program are to protect the public from harm, ensure the safety of employees, and affect positively the overall success rate of missions and operations. The SMA portfolio includes both institutional and program safety contracts.

(a) Buying Location(s). Contracts for safety mission and assurance and related services may be executed at the following centers (the titles of contracts may change upon recompete):

(1) Programmatic

(i) GRC/NASA Safety Center (NSC): SMA Engineering and Technical Services (SETS) (includes HQ), PIID#80GRC023DA002, and SMA, Audits, Assessments and Analysis Services (SA3), PIID#80GRC022GA001;

(ii) GSFC: Safety and Mission Assurance Services II (SMAS II) (Includes Wallops), PIID#80GSFC17C0015; and

(iii) JSC: Safety and Mission Assurance Engineering Contract II (SMAEC II) (includes White Sands Test Facility), PIID#80JSC019D0008.

(2) Institutional

(i) JSC/LaRC collaboration: Center Safety and Fire: (will also include GSFC, Wallops, and LaRC in follow-on contract); PIID# TBD

(3) Combined Program and Institutional

(i) ARC: Safety and Mission Assurance (includes AFRC, if needed), PIID#80ARC020D0012;

(ii) GRC: Safety, Health, and Mission Assurance Support Services, PIID#80GRC018C0028

(iii) KSC: Safety and Mission Assurance Support Services (SMASS) III, PIID#80KSC018C0007;

(iv) MSFC: MSFC Safety and Mission Assurance (SMA) Services (includes SSC and MAF), PIID#80MSFC18C0005;

(v) GSFC/IVV: Systems and Software Assurance Services (SAS2), PIID#80GSFC22CA049; and

(4) Additional contracts may be transferred to the OSMA portfolio as NASA refines its enterprise requirements across the Agency.

(b) New or unique services shall be coordinated between the Center Procurement Offices and Office of Safety and Mission Assurance (OSMA) Directorates prior to submission into the PSL tool. If the new or unique services are outside of the Center's approved OSMA procurement strategy, the Center contracting office shall coordinate with the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement and the OSMA ERM to obtain approval to procure these services**.**

A-102.22 Engineering Services

(a) Buying locations. The Offices of Procurement at each NASA Center will procure these services.

(b) Under the Engineering PSL, engineering "services" are managed by Center Engineering organizations, and include technical discipline support for design/development, testing, operations, and research, science, and technology development, in addition to the development, operations and modifications of engineering-related facilities.

(c) All Centers shall implement their approved strategies and continue to reassess their portfolios to look for ways to reduce the duplication of these services across multiple contracting vehicles. Current Center strategies will be made available on the Doorway Into Procurement site.

(d) If the new or unique services are outside of the Center's approved Engineering Strategy, the Center contracting office shall coordinate with the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement and ERM to obtain approval to procure these services.

(e) The cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement and ERM in coordination with the Center's procurement office will conduct ongoing assessment to determine if an enterprise contract and/or contracts are feasible for services common to multiple locations.

A-102.23 Technology Transfer Services.

(a) Buying Location. MSFC Office of Procurement (OP) is the buying location for Technology Transfer services. MSFC OP shall establish an enterprise level contract to support the Technology Transfer services across the agency.

(1) The Consolidated Agency Technology Transfer Services (CATTS) contract is the enterprise contract that will be used by HQ, MSFC and SSC. All other centers (AFRC, ARC, GRC, GSFC, JSC, KSC and LaRC) shall have the option to transition to this enterprise contract upon completion of their current tasks.

(b) MSFC OP and the Technology Transfer ERM shall ensure all Centers' requirements are included in the CATSS contract and that there is an on-ramping capability embedded within the contract for other centers to come onboard as they so desire.

(c) In order to ensure coordination, Center Procurement offices that are not utilizing the enterprise contract shall coordinate with technical stakeholders to ensure that they have elected not to use the MSFC enterprise vehicle and document the file accordingly.

(d) Technology Transfer services shall include the following:

(1) Technology Triage Reports (TTR)
(2) Technology Screening Reports (TSR)
(3) Commercial Technology Assessment reports (CTAR)
(4) Patent Maintenance Fee Triage Analysis
(5) Direct Marketing (Low and High Intensity) Service
(6) Export Control Review Memorandums

A-102.24 Office of Diversity and Equal Opportunity/Equal Employment Opportunity (ODEO/EEO)

(a) Buying Location. The NASA Shared Services Center (NSSC) OP is the buying location for ODEO/EEO services.

(b) The requiring office shall contact the NSSC OP to procure ODEO/EEO services, such as the following:

Designated EEO Officer/Counseling Support Services, EEO/Anti-Harassment/Policy/ADR services/conflict management; EEO Functional Review; Final Agency Decisions (FAD); EEO Investigations of Discrimination Complaints. Centers may order EEO Services against the NSSC Multiple Award BPAs 80NSSC23AA013, 80NSSC23AA014, 80NSSC23AA015, and 80NSSC23AA018.

(2) Accessibility - (Reasonable Accommodations, Sign Language Interpreting (SLI), Communication Access Real-Time Translation (CART) services center contracts; Personal Assistance Services (PAS)); centers may order PAS services against the NSSC BPA Number 80NSSC20A0014; and SLI services against the NSSC BPAs (80NSSC22AA010, 80NSSC22AA011, and 80NSSC22AA012).

(3) Diversity Equity Inclusion Accessibility (DEIA) Activities; and

(4) Training over $25K (contact the NSSC HR training office for training under $25K).

(c) Centers may use their existing SLI contracts or the NSSC BPAs.

A-102.25 Administrative Services

(a) Buying Locations. The SSC OP, AFRC OP, LaRC OP, and GSFC OP are the buying locations for administrative services requirements.

(1) The SSC OP will support requirements from the SSC, JSC, KSC, and MSFC. (Space Flight Region)

(2) The AFRC OP will support requirements from the AFRC and ARC. (West Region)

(3) The LaRC OP will support requirements from LaRC and GRC. (East Region)

(4) The GSFC OP will support requirements from the GSFC and HQ (Goddard Space Flight Center Region).

(b) The requiring office shall contact their center OP to procure administrative services, which may include but not limited to the following:

(1) General Office Services (e.g., Telephone Services, Appointment and Schedule Services, Visitor Services, Meeting Services, Teleconferencing Services, and Scheduling Conference Rooms, Mail Services/Information Dissemination, Ordering Supplies, Copying/Faxing/Scanning)

(2) Data Management Services (e.g., Desktop Word Processing, Data/Action/Tracking and Entry)

(3) Travel Coordination

(4) Time and Labor Collection

[PN 23-19]

(5) Property Coordination

(6) Move Coordination

(7) Training Coordination

(8) Information Services Coordination

(9) Customer Service

(10) Special Events Coordination

(11) Reporting Requirements

(c) The buying location must award resulting contracts and task orders (if applicable) on a firm-fixed-price basis; and set-aside these requirements for a small businesses category, to include 8(a) Program, Small Historically Underutilized Business Zone (HubZone), Service-Disabled Veteran-Owned Small Business (SDVOSB), and Woman-Owned Small Business Program (WOSB), pursuant to the procedures prescribed at FAR Subpart 19.5.

(d) Exception. GSFC shall utilize the AbilityOne program

(e) The following contract is a mandatory use contract:

(1) The Dual Administrative Support Services (DASS) IDIQ contract (80SSC020D0002) is the mandatory use contract for administrative services requirements procured by the SSC, JSC, MSFC, and KSC.

(f) Upon award, the Center Administrative and Technical Support Services (CATSS) III IDIQ contract will be the mandatory use contract for administrative services procured by AFRC and ARC.

(g) Upon award, the East Region contract will be the mandatory use contract for administrative services procured by LaRC and GRC.

(h) If contracting officers are unable to satisfy a requirement for administrative services from the respective mandatory use contract for their center listed above, contracting officers, in coordination with the requiring office, shall obtain concurrence from the administrative services Enterprise Resource Manager (ERM) and approval from the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement prior to satisfying the requirement under a different contract vehicle.

(i) NASA Centers will be delegated authority for issuing and administering individual task orders.

[PN 23-02]

Appendix A-102.26 Utilities and Utility Services

(a) Buying locations. For utilities and utility services as defined in FAR Part 41 the Offices of Procurement at each NASA Center will procure these goods and services.

Appendix A-102.27 Energy Performance Contracts (EPCs)

(a) Buying locations. For energy performance contracts (such as Energy Savings Performance Contracts (ESPCs)) as discussed in FAR Parts 23 and 41 and NFS Parts 1823 and 1841, the Offices of Procurement at each NASA Center will procure these goods and services.

[PN 23-19, PN 24-07]

Appendix A-102.28 Occupational Health Services

The objecting of the Occupational Health program is to provide occupational medical services to NASA employees and contractors who become ill or are injured while at the Center. Occupational and preventive health services are provided to maintain and improve the health of the Center's employees.

(a) Buying Location(s). The following contracts will be utilized for occupational health requirements and Centers are responsible for managing their respective requirements. These contracts may exercise existing options without additional approval. Options must currently exist on the contract involved and not be a part of a request to extend the contract beyond its original term.

(1) LaRC- Occupational Health Program – 80LARC20D0005;
(2) KSC NASA Environmental and Medical Contract (NEMCOM) – 80KSC020D0023;
(3) JSC – Human Health and Performance Contract (HHPC) – NNJ15HK11B;
(4) ARC – Safety and Mission Assurance – 80ARC020D0012;

(i) Centers are delegated authority for issuing and administering individual task orders against the NEMCOM.

(ii) New or unique services shall be coordinated between Center Procurement and Occupational Health Directorates. If the new or unique services are outside the Center's approved occupational health strategy, the Center contracting office shall coordinate with the Procurement Strategic Operations Division Procurement Analyst and Occupational Health Enterprise Requirements Manager to obtain approval to procure these services.

(b) The following requirements are exempt from the occupational health strategy in section (a)(2) above: KSC NASA Occupational Health Contract (NOHC II) – 80KSC020A011, GSFC Employees Assistance Program (EAP) requirements, and JPL occupational health requirements.

[PN 24-07]

APPENDIX B
CONTRACT CLOSEOUT PROCEDURES

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APPENDIX B
CONTRACT CLOSEOUT PROCEDURES

[PN 20-09, PN 24-04]

B-100 Purpose.
This appendix outlines standard closeout procedures and strategies for use across the Office of Procurement (OP) enterprise. This appendix establishes internal controls that will eliminate vulnerabilities against overaged contracts (physically complete for 6 years or more) and unliquidated obligations. This Appendix provides adaptive practical tools (e.g., pending contract transfer report, closeout checklist, etc.) and innovative policy-based solutions that will enable timely contract closeout.

B-101 Roles and Responsibilities.
As used in this appendix-

"Administrative Contracting Officer (ACO)" is the NASA Lead ACO, a position held by NASA Headquarters (HQ) and performs at least four specific functions associated with FAR 42.302(a) for contractors where NASA is identified as the Cognizant Federal Agency (CFA).

"Closeout Contractor" is responsible for the close out of the official procurement file by working those actions as defined by the agency-wide contract after such closeout instruments are received. The agency-wide closeout support services are provided as centralized services across the (OP) enterprise.

"Closeout Contracting Officer Representative (COR)/HQ OP Contract Closeout Manager" is a dual role responsible for interpreting contract closeout requirements and evaluating performance. This role is responsible for the overall closeout governance structure across OP's enterprise by facilitating the Closeout Capability Group CCG, maintaining enterprise metrics and the Contract Closeout Procedure Appendix, and creating/maintaining new policy and procedures relative to closeout. This role is responsible for working with the Closeout Contractor to ensure optimal closeout supports services are provided across OP's enterprise framework.

"Closeout Capability Group (CCG)" is chaired by HQ OP Contract Closeout Manager, executive champion is the Director of Procurement and Grant Policy Division, with members consisting of center representatives. The CCG is responsible for creating an enterprise framework that will provide oversight to the contract closeout process by working to create innovations and improvements related to contract closeout policy, procedures, and metrics across the procurement organization. The CCG Center representatives are responsible for serving as the closeout champion for their respective center by providing feedback to their organization as it relates to closeout metrics, policy, processes, and initiatives across OP's enterprise.

" Closeout Contracting Officer" is the representative that interfaces between the Contracting Officer and the Contract Closeout Contractor.

"Contract Audit Services Manager/Deputy Program Manager" is responsible for defining and evaluating audit service requirements for contractors where NASA is identified as the Cognizant Federal Agency. This role is responsible for negotiating audit service needs with NASA's audit service providers.

"Transmitting Contracting officer" shall ensure that files presented to the Closeout Contractor are complete, and in accordance with NASA's closeout transfer checklist, and FAR 4.804-4. The contracting officer shall:

- Address all topics related and appropriate for their specific procurement and ensure required documentation is included in the official procurement file
- Ensure that the contract closeout checklist is completed and transmitted to the acquisition support services along with the official procurement file
- Ensure that files are transferred within specified timeframes as outlined in this Appendix.

"NASA as Cognizant Federal Agency (CFA)" means NASA is the CFA, under the Enterprise Pricing Office, for its organizations pursuant to FAR 42.003 Cognizant Federal Agency and for the responsibilities outlined in FAR 42.101 Contract Audit Services. Specifically, NASA as CFA in conjunction with NASA's Lead ACO, is responsible for ensuring the functions of FAR 42.302 including (a)(5), (a)(9), (a)(11), and (a)(12) are completed. NASA's CFA list may be requested from the NASA Enterprise Pricing Office by sending an email to HQ-DL-OP-NASA-Contract-Audit@mail.nasa.gov.

"Termination Contracting Officer (TCO)" is responsible for resolving contracts that are terminated for convenience or default; resolve all open actions and liabilities relating to terminations prior to closeout, and issue settlement agreement or determination. (Reference FAR 49.104)

B-102 Audit Services.

B-102.1 Obtaining Audit Information.

(a) NASA Headquarters OP maintains contractor profiles, audit, and other pertinent information for those organizations where NASA is identified as CFA. Access is currently limited to the Enterprise Pricing Office.

(b) Audit Information can be found under the Audit section, in the Enterprise Pricing Office website located at the Enterprise Pricing Office/audit/services at https:// Enterprise Pricing Office (sharepoint.com).

B-102.2 Submitting Audit Requests.

(a) All audit requests shall be submitted to HQ-DL-OP-NASA-Contract-Audit@mail.nasa.gov.

(b) Expedited Audit Request can be submitted when an urgent or priority need for an audit has been identified by your center. Reference the EPO website at: Enterprise Pricing Office-Home (sharepoint.com).

B-102.3 Risk Assessments.

Audit Service Providers perform risk assessments as a part of the audit related activity and can request information from the contracting officer. The contracting officer is responsible for supporting request of this type to aid in audit resolution.

B-102.4 NASA Audit Service Providers.

The following are NASA audit service providers:

(1) Certified Public Accounting (CPA) Firms /Audit Support Services (Multi-award): Performs audit support services on behalf of NASA. Audit Support Services are coordinated by the NASA Cognizant Federal Agency Office COR.

(2) Defense Contract Audit Agency (DCAA): Performs audit support services on behalf of NASA. Audit Support Services are coordinated by the NASA Deputy Program Manager.

(3) Defense Contract Management Agency (DCMA): Performs administrative contract administration support and pricing support on behalf of NASA. Audit Support Services are negotiated by the NASA Cognizant Federal Agency Office.

(4) Department of Interior (DOI): Performs audit support services on behalf of NASA. Audit Support Services are negotiated by the NASA Cognizant Federal Agency Office.

B-103 Contract Closeout Metrics.

(a) The Closeout Contractor is responsible for submitting metrics to HQ OP Contract Closeout Manager on a reoccurring basis. Metrics should be submitted utilizing templates/power point slides provided by HQ OP Contract Closeout Manager on a reoccurring basis.

(b) The following contract closeout metrics will be maintained and provided by the Closeout Contractor monthly.

(1) Current Inventory – This metric tracks those instruments in the closeout contractor inventory that are physically complete for less than 6 years and have not been administratively closed.

(2) Backlog – This metric tracks contracts that have been physically complete for 6 years or more and have been submitted to the closeout support but have not been administratively closed.

(3) Instruments Closed – This metric tracks how many instruments were actually closed each month for each center and the agency as a whole.

(4) Instruments Received – This metric tracks how many contracts are being submitted to the Closeout Contractor each month.

(5) Deobligations – This metric tracks the amount of funds either forfeited or saved as a result of a deobligation.

(6) Cancelling funds by instrument and status and a second chart by Center and dollar value.

(c) The following contract closeout metrics will be submitted and provided by each Center's CCG Representative:

(1) Pending Contract Transfer – This metric is submitted on a quarterly basis and tracks contracts that are physically complete but have not been transferred to the closeout contractor. The Centers are required to provide status as to why the contracts are pending.

(2) Forecasted Contract Closeout – This metric is submitted annually and will capture each quarter. This report will capture contracts forecasted to close out in 3 months, 6 months, 9 months, and 12 months. All centers shall use this metric as a tool to engage and encourage the workforce to prepare procurement files for timely transfer to the closeout contractor by submitting an email to all contractors listed in the forecasted report.

B-104 Transfer of Closeout Actions.

(a) The contracting officer shall ensure the official procurement file complies, all items are completed, and all required documentation is provided with the Closeout Transfer Checklist that accompanies the procurement file for acceptance by the Closeout Contractor.

(b) Centers shall ensure that contract closeout files, physical or electronic format, are made accessible to the Closeout Contractor before transferring the closeout procurement file.

B-104-1 File Transfer.

(a) All contract types and official procurement files, unless otherwise retained for closeout by the contracting officer, shall be transferred to the Closeout Contractor. This includes orders against Indefinite Delivery Indefinite Quantity (IDIQ) contracts (both fixed price and cost reimbursement). This transfer shall occur immediately upon physical completion but no later than**:**

Contract Type	**Transfer Timeline**
Contracts using Simplified Acquisition Procedures (SAP)	30 days
Firm-Fixed Price Contracts, other than SAP	60 Days
Contracts requiring settlement of indirect cost rates	120 Days
All contracts not addressed above	90 Days

(b) If for any reason the transfer timeline cannot be met, this reason shall be featured with rationale in the Center's Pending Contract Transfer metric and provided to HQ OP Contract Closeout Manager as a part of its submission.

(c) For cost type contracts it is the contracting officer's responsibility to include all final rate agreements completed prior to the date the contract is sent to the Closeout Contractor in the contract file. The contracting officer is encouraged to use Quick-Closeout procedures when applicable.

B-104-2 Electronic File Transfer.

(a) Centers shall transmit electronic and hybrid files electronically by sending an email notification indicating a link of location of electronic files, SharePoint/ Shared Drive access, Folders Management (FM) and any other electronic solutions as identified by the center.

(1) *Hybrid Files – Files that consist of both hardcopy and automated files. If the contractor is on-site the Center may send their hardcopy files to the closeout contractor at their site. The Contracting officer will send an email denoting the file is hybrid and will state the location of the hardcopy files.

(b) The email shall be sent to the following email address and with the following subject nomenclature:

Email Address: nssc-closeout@mail.nasa.gov
Email Subject: Subject: Center-New Closeout-Contract No- Contract Type
(Example: JSC-NC-NNJ12HA01B-CPAF)

B-104-3 Hardcopy File Transfer.

Paper files will not be transferred to a central NASA location and will be maintained by each Center.

B-104-4 Closeout Transfer Checklist.

The contracting officer shall review and ensure the official procurement file complies with the Contract Transfer Checklist and any other closeout related activities, if applicable, before transferring files to the Closeout Contractor.

B-105 Closeout Contractor Process.

The following processes are performed by the Closeout Contractor up to point of signature however, the contracting officer has the flexibility to perform these functions if it will yield a savings in cost/time to the Government.

B-105-1 Acceptance.

(a) The Closeout Contractor shall do the following when accepting a contract closeout action:

(1) Generate an email acknowledging receipt to the transmitting contracting officer within 3 business days of receipt.

(2) Notify the transmitting contracting officer whether the file has been accepted or rejected for closeout processing with 7 business days of the receipt of the file. Upon review and final acceptance of all procurement files, the Closeout Contractor shall indicate acceptance on the closeout transfer checklist and notify the vendor within 7 business days of technical acceptance of all deliverables and request completion and submission of contract closeout documents.

(3) Within 7 business days of acceptance:

(i) If an update is required, Change the Purchasing Group (P-Group) on the Org Data Tab and Buyer ID in SAP, FPDS-NG, and the official contract writing system to the Closeout Contractor P-Group/Buyer ID. The CO P-Group/CO ID remains with the cognizant procuring CO/Org.

(ii) Ensure the fields "Sent to Closeout Date" and "Physically Complete Date" have been populated by the Contracting officer in SAP and the official contract writing system.

(iii) In SAP and the official contract writing system, populate the "Admin. Comp. Date" field with the signature date from Block 12b of the NF 1611, Contract Completion Statement, and populate the "Destroy Date" field with the appropriate destruction date per applicable records retention requirements.

(4) In the periods of unusually high volume, the Closeout Contractor may request relief from this timeline from the COR and Task Monitors until the flow returns to a management rate. The Closeout Contractor shall consistently follow-up with the vendor to secure appropriate closeout documents in a timely manner.

(b) The Closeout Contractor does not have access to contractor's proprietary information and will need to submit audit request/inquires to the HQ-DL-OP-NASA-Contract-Audit@mail.nasa.gov.

(c) The Closeout Contractor shall perform closeout related actions and coordinate final documents needed from vendor and closeout contracting officer. Each closeout procurement file shall contain the following, if applicable:

(1) Cover memorandum for record explaining in the status of the instrument and actions taken to facilitate closeout

(2) NF 1611, Contract Completion Statement – required when obligations are over the simplified acquisition threshold (SAT)

(3) NF 1612, Contract Closeout Checklist – required when obligations are over the SAT.

(4) A copy of any final indirect cost rate agreements for those fiscal years previously audited and settled for the contracts POP.

(5) Incurred cost audits

(6) A cost element breakdown, by fiscal year, using previously audited and settled indirect cost rates and proposed (unsettled) indirect costs rates. The breakdown should clearly indicate rates that represent provisional indirect cost billing rates, audited and settled indirect cost rates, and those indirect cost rates that are proposed.

(7) Provide SAP screenshot of financial data tab with invoices totals and obligated amount.

(8) NF 778, Contractor Release Statement, (or contractor equivalent), reflecting final contract cost and fee.

(9) NF 780, Contractor Assignment of Refunds, Rebates, Credits, and Other Amounts. (if applicable)

(10) NF 1018, Contractor Report of Government Property.

(11) Subcontracting Report for Individual Contracts (completed using Electronic Subcontracting Reporting System (ESRS)

(12) Proof of payment of the final Invoice/Voucher - reflecting final indirect cost rates or final Invoice/Voucher – reflecting fee withheld.

(13) Proof of payment of the final invoice for all fixed price instruments. Deobligation of excess funds or approved MR11 document in contract file.

(14) COR Completion Statement or Evidence of COR's concurrence on final invoice/voucher

(15) Confirmation of final Contractor Performance Assessment Reporting System Evaluations. Confirmation can be a screenshot of administrative data from CPARS.

(i) or overaged contracts that do not have evidence of a final past performance determination, the CO prepares a memo for the contract file indicating the file is overaged, the length of time past the period of performance end date, and efforts to contact the servicing COR.

(16) The contract file shall include, where applicable, one of the following:

(i) New Technology Reporting Certificate

(A) The Closeout Contractor shall ensure that the Technology Transfer Compliance Team issued the contractor a certification of compliance with the new technology reporting requirements stipulated in the agreement. The certificate of compliance memo is an automatically generated email generated by the Technology Transfer Compliance Team. Instruments from December 21, 2017, or earlier were not issued a certification of compliance and were part of a Technology Transfer Program (T2P) mass closeout.

(ii) Approved Final Patent Rights Report (if applicable)

(A) The Closeout Contractor shall ensure that the Office of Chief Counsel (OCC) has concurred on the Final Patent Rights report. If OCC advises that further action is required, the Closeout Contractor will take action with the contractor or COR as necessary. If after such follow up action there is no resolution, the Closeout Contractor shall contact the CO for resolution.

(v) Completed NF 1679 Disclosure of Invention and New Technology (If applicable)

(17) Performance Validation Form

(18) Any additional closeout items that was not included in the original closeout transfer.

(15) A final obligation or deobligation modification.

B-105-2 Financial Reconciliation.

(a) The initial reconciliation is the responsibility of the servicing contract office as part of population of the closeout transfer checklist. Determine if there are any funds that must be obligated or deobligated. If the contract file does not contain a funds analysis, prepare a summary funding analysis populated/or with the total all obligations/de-obligations made and total invoices paid against the award.

(b) Obtain payment history information from Business Objects (BOBJ), if at all possible, for converted awards to SAP, when applicable.

(c) Conduct a payment reconciliation. All documents should essentially reflect the same history of obligations, de-obligations and expenditures. Any disparities must be resolved and documented in the file.

(d) If necessary, the Closeout Contractor makes note of any remaining funding actions as part of the closeout package MFR.

B-105-3 Invoicing.

(a) Interim voucher. The Closeout Contractor shall ensure the contractor substantiates the validity of the interim voucher (e.g., regular rate adjustment, 533 rate adjustment) and coordinate with the cognizant Contracting officer to request for funding (if applicable) to pay interim vouchers.

(b) Final Invoice/Voucher. The Closeout Contractor shall review, validate, and ensure that the Final invoice/voucher is marked "Final". The contractor shall be instructed to submit their final invoice to the NASA Shared Services Center (NSSC) Accounts Payables Office via the Invoice Routing and Information System (IRIS). For legacy contracts, the invoices may be submitted to the NSSC accounts payable. The Closeout Contractor should coordinate with the Closeout Contracting Officer the approval of the final invoice and if additional funding is needed, when applicable. The NSSC shall route the invoice to the contracting officer for approval through IRIS.

B-105-4 Canceling Funds.

At the outset of the 4th quarter of the fiscal year, the HQ OP Contract Closeout Manager establishes Agency timelines for cancelling funds activities for the rest of the year (e.g., final contractor invoice date, final deob date, final MR11 date). This guidance is published and briefed to all Center CCG or Cancelling Funds representatives to ensure common understanding of the enterprise guidance. The Closeout Contractor tracks the items in the Closeout Contractor inventory

requiring return of cancelling funds. Center CCG representatives work with the Contract Closeout Team to establish priorities on handling cancelling funds issues. The timeline for return of cancelling funds is according to the table below:

Code	Criteria	Action	Start Date Of Action:	Action Completed By:
A	No Response from Vendor	Send Deob Mod to Closeout CO	1-Aug	7-Aug
B	Vendor engaged, but no Final Determination	Send Deob Mod to Closeout CO	25-Aug	31-Aug
C	Vendor States They Will Invoice	Receive Invoice/Determine if Cancelling Funds Remain/Deob	15-Aug	31-Aug
D	Reimbursable Funds	Send Deob Mod to the Closeout CO (complete 1-15 July)	1-Jul	15-Jul
E	Vendor Confirmed no Further Billing	Send Deob Mod to Clseout CO	Immediately	
F	Cleared	No Further Action Req'd		

The Closeout Contractor will not accept new instruments with cancelling funds in the Closeout Contractor inventory later than August 31 each fiscal year due to Agency deob and MR11 timelines mentioned above.

B-200 Closeout of Cost Type and Flexible Priced Contracts.

The closeout of cost reimbursement contracts is generally considered as the most complex of acquisition vehicles to closeout due to the need for the final determination of indirect cost rates. The below steps outline the process for closing out cost reimbursement and other flexible priced contracts.

B-200-1 Determination of Final Indirect Cost Rates.

(a) The determination of final indirect costs is central to the closeout of cost type and flexible priced contracts. This determination seeks to resolve the differences between any provisional billing rates and the contractor's actual cost experience. The resulting determination may require an adjustment to the final obligated amount of the contract either up or down.

(b) The contracting officer should carefully review any limitation of costs/funds clauses in the contract.

(c) The ACO is responsible for settling final indirect cost rates. There are four ways to determine final indirect cost rates:

(1) Quick Closeout Procedures (QCP)

(i) Quick closeout procedures are used to establish final indirect cost rates for a specific contract, without an audit. The indirect cost rates used under this procedure apply only to the contract being closed, and are not considered a binding precedent when establishing the

final indirect cost rates for other contracts. In accordance with FAR 42.708, the contracting officer may negotiate final indirect cost rates for a specific contract, in advance of the determination of final indirect rates.

(ii) The Closeout Contractor shall use procedures in accordance with NFS 1842.708-70 NASA Quick-closeout procedures.

(iii) Document the file with the basis for using quick closeout procedures in determining final indirect cost rates, including indirect cost rates utilized to derive the final indirect costs. If necessary, supplement the file with a more detailed summary of negotiations to explain any pertinent or significant items used in making the final determination of indirect cost rates. If the Contracting officer and the contractor cannot agree on final indirect cost rates using quick closeout procedures, the rates will be determined in accordance with FAR 705-1 or FAR 42.705-2.

(2) Determination of Final Indirect Cost Rates (Auditor Determination Procedure)

(i) Final indirect cost rates must be determined in accordance with FAR 42.705. In some cases, the procedures outlined in FAR 42.705-2, Auditor Determination Procedure, will be utilized. This procedure primarily relies upon an audit service provider to conduct the audit, and make a final indirect cost rate determination, in cooperation with the contractor. When using the auditor determination procedures, the contracting officer shall:

(A) Check with the audit service provider to determine if final indirect cost rates have been established for the unsettled years, or if indirect cost rate audits are currently in progress.

(B) If final indirect cost rates have not yet been established for the unsettled years, request an audit for the unsettled years. This request shall be coordinated through the CCG Representative.

(C) Utilize the indirect cost rate agreement, which is typically combined with an audit report, negotiated by the auditor to complete the closeout.

(3) Determination of Final Indirect Cost Rates (Contracting Officer Determination)

(i) This function is only performed by the Administrative Contracting Officer (ACO).

(ii) In most cases, procedures under FAR 42.705-1, Contracting Officer Determination Procedure, will be used. Once an incurred cost audit is complete, a copy is forwarded to the ACO for consideration and establishment of final indirect rates. The final cost adjustments and the amount of fee should be mutually agreed to by the ACO and the contractor. Generally, if mutual agreement on final indirect cost rates cannot be reached, the ACO may make a unilateral determination, which may be challenged by the contractor under the Disputes clause.

(A) Educational Institutions – OMB Circular A-21 governs the determination of indirect cost rates for educational institutions. See FAR 42.705-3 for determining indirect cost rates for educational institutions.

(B) State/local governments and other non-profit organizations (other than educational institutions) – OMB Circulars A-87 and A-122 govern the determination of

indirect cost rates for state and local governments and other non-profit organizations (other than educational institutions). (Reference 2 CFR 200.425)

(4) Low Risk Memorandum

(i) Low Risk Memorandums can be released by either an ACO or Auditor. This procedure primarily relies upon an audit service provider to conduct a risk assessment in lieu of an incurred cost audit. After a certified incurred cost proposal is submitted by the contractor and is determined adequate, a risk assessment is performed. If the risk assessment yields low risk, a Low-Risk Memorandum will be issued in lieu of a final audit report. Once issued, the Low-Risk Memorandum accepts the actual rates experienced as the final indirect rates. The Low-Risk Memorandum is provided to the ACO in support of rendering a final indirect cost rate determination. The ACO or auditor will utilize the low-risk memorandum to establish the final indirect rates.

(ii) The procedures for evaluating and reporting on low-risk annual incurred cost proposals and completing a low-risk memorandum in lieu of an audit report generated by either a CPA Firm, DCAA, or DOI are as follows:

(A) NASA's HQ OP resident auditor or designee will evaluate all incurred cost proposals for adequacy, in accordance with FAR 52.216-7, using the NASA Incurred Cost Proposal Adequacy checklist. If the incurred cost proposal is not adequate and the deficiencies cannot be remedied with minor effort, NASA will return the proposal to the contractor with written instructions on required corrective actions.

(B) All incurred cost proposals that are submitted to NASA, where NASA is identified as the CFA, will undergo a risk-based analysis to determine if a waiver of the audit requirements under FAR 4.804-5(a)(12), 42.705-1(b)(2), and 42.705-2(b)(2)(i) is appropriate and justified as a sound business decision.

(C) To perform the risk-based analysis, NASA's resident auditor or designee associated with NASA's audit group will complete NASA's internal Incurred Cost Proposal Risk Determination form.

(D) The resident auditor or designee is required to answer a series of questions and assess whether the proposal should be considered low or high risk. The criteria for assessing the risk of a proposal includes prior incurred cost audit experience, any audit leads, or other significant risk identified, as well as the significance of prior questioned costs.

(E) NASA's resident auditor or designee must use their professional judgment when determining that a specific proposal can be considered for a low-risk memorandum. Auditors must consider the following when making this determination: their knowledge of the contractor, the results of adequacy reviews, and other audit activity performed since completion of the last incurred cost audit (e.g., reported business system deficiencies establishment of provisional billing rates, voucher processing procedures, real-time testing of direct

costs, etc.) to determine if there are any risks that would warrant the contractor to be classified as high risk and an audit be performed, especially when significant time has elapsed since the performance of the last incurred cost audit.

(F) Low risk determinations will waive the audit requirement resulting in the issuance of a Low-Risk Memorandum for the purposes of satisfying the audit requirements at FAR 4.804-5(a)(12), 42.705-1(b)(2), and 42.705-2(b)(2)(i).

(G) High risk determinations will result in assigning the proposal for audit, except in the event that a cost/benefit business case assessment determines that it is beneficial to waive the audit. The business case must be approved by the Deputy Assistant Administrator for Procurement.

B-201 Closeout of Firm Fixed Priced Contracts.

(a) To closeout a Firm Fixed Priced (FFP) type contract, complete the following items:

(1) Upon completion of all technical performance requirements and period of performance has expired, a contract is rendered inactive, and the contracting officer should immediately begin the closeout process.

(2) The COR's completion statement is provided.

(3) For overaged FFP contracts in which the contractor has failed to submit a final invoice, the Closeout Contractor shall submit a Final Notice of Intent to close the contract to the contractor. If the contractor does not respond within 30 days, the Closeout Contractor shall prepare a unilateral modification for contract closeout.

(4) Closeout Package Contents (ref B-101.5(c)). However, NASA Form (NF) 778, Contractor's Release, is not required except for construction contracts. Also, no documents are required related to indirect rates.

B-202 Closeout of Simplified Acquisitions.

(a) To the greatest extent practicable, simplified acquisitions should be closed within 14 days after final payment and delivery/performance.

(b) The Closeout Contractor shall ensure the following when closing out simplified acquisitions as applicable:

(1) Ensure there is a final Material Inspection and Receiving report

(2) Receipt of a final invoice and, if not, work with the contractor to get their final invoice submitted. Prepare an appropriate modification to deobligate any excess funds or formally close the purchase order for closeout contracting officer signature.

(3) Ensure the dispositioning of GFP/IAP when applicable.

(4) Ensure that the award is properly closed in all applicable systems.

(5) Ensure Technology Reports are complete, if applicable.

B-203 Closeout of Blanket Purchase Agreements (BPA) and Basic Ordering Agreements (BOA).

(a) BPAs and BOAs are not contracts. The "Call" or "Order" becomes the "Contract". The Closeout Contractor should read through the agreement carefully, as it should specify the point at which each call or order becomes a binding contract (e.g., issuance of the call/order, acceptance of the call/order in a specified manner, or failure to reject the call/order within a specified number of days).

(b) Procedures for closing the "Contracts" (Calls or Orders) are the same as stated in Simplified Acquisitions as applicable. NOTE: IAW FAR 4.804-5 -- Procedures for Closing Out Contract Files Subparagraph (b)(5), the Closeout Contractor should ensure that the Contract Completion Statement contains the last call/order number as if the order were a contract awarded independently of the agreement.

(c) The "Agreement" is considered closed once all calls/orders have been closed.

(d) The Acquisition Support should ensure BPAs are properly closed in FPDS-NG and NASA financial or contract writing systems, is reflected in Enhanced Procurement Data Warehouse (EPDW).

B-204 Closeout of Task and Delivery Orders.

(a) Each Task/Delivery Order (TO/DO) under an Indefinite Delivery/Indefinite Quantity (IDIQ) contract must be closed separately as if it were a stand-alone contract if the contract was funded at the TO/DO level. The Closeout Contractor shall follow the procedures outlined above that correspond with a cost reimbursement TO/DO or a fixed price TO/DO.

(b) Whenever appropriate cost reimbursement TO/DOs should be closed via Quick Closeout Procedures. If Quick Closeout Procedures are not appropriate, the Closeout Contractor should wait to close out the task order until the necessary indirect cost rate information is obtained or an alternate agreement is reached.

B-205 Closeout of Interagency Acquisitions (IAA).

(a) The Closeout Contractor shall:

(1) Verify technical acceptance of requirements by sending an email or memo to the program office to confirm all technical requirements have been met by the contractor or partnering agency

(2) Verify with the partner agency that all invoices (Intra-Governmental Payment and Collection (IPAC) transactions) have been submitted and paid, i.e., no additional invoices will be submitted. The partnering agency is allowed up to 7 years to submit an IPAC request for

payment. If 7 years have passed and the partner agency has not responded after 3 attempts have been made, the Closeout Contractor may process the IAA for closeout.

(3) Ensure that any amount remaining on the IAA is consistent with the amount shown in SAP and the official contract file. Perform any reconciliation, as necessary.

(4) Prepare a modification to officially closeout the IAA for closeout contracting officer signature. The modification should include the deobligation of any unliquidated funds.

(5) Ensure the action is properly closed in SAP and all applicable systems and/or agency contracting writing system.

B-206 Acquisition Support Checkpoint.

The Closeout Contractor shall close Grants and Cooperative Agreements in accordance with the steps in the NASA Grants and Cooperative Agreements Manual (GCAM) section 9.

B-300 Unique Contract Closeout Situations.

These functions are provided by the Closeout Contractor. All actions should be worked to the point of signature and coordinated with the center's closeout contracting officer for final signature and execution.

B-300-1 Contractor No Longer in Business.

(a) It is not uncommon to have open contracts for companies that are no longer conducting business. In these instances, the Government shall take every reasonable measure to locate the company and/or its principals. When the contractor is no longer in business, the Closeout Contractor shall:

(1) Review the company's System of Award Management (SAM) registration (active/inactive) and call the entity's business point of contact.

(2) Review the company's website for contact information and contact/inquire about the company's status from their identified customers.

(b) Document the contract file with every attempt made to locate the company. If all of the above attempts prove unsuccessful, the acquisition support should begin Administrative Unilateral Closeout. Administrative Unilateral Closeout begins with a thorough review of the official contract file(s).

(c) The following should be ascertained during that review:

(1) Is the contract physically complete and has Government acceptance of goods/services been received?

(2) Was the contractor previously paid any funds?

(3) Has the cognizant audit or administration office been involved with this contract? Are there any other agency's contracts with this contractor? Check with the CFA or audit service provider to determine the status of any indirect cost rate settlement (if this contract is other than FFP)

(4) Has the contract been terminated for convenience or default?

(d) Any other pertinent information relative to the contractor or performance of the contract (e.g., unsettled subcontract costs, litigation, etc.) should be considered. It is recommended that the contracting officer consult with legal counsel to ascertain if any actions are pending against this vendor/contractor.

(e) Review all of the available data to determine the final contract price and if any excess funds can be deobligated from the contract.

(f) Complete a memo to file documenting the rationale used in the final decision to proceed with a unilateral modification.

(g) Prepare a unilateral modification for contracting officer signature to deobligate any excess funds and formally closeout the contract.

B-300-2 Contractor in Bankruptcy.

(a) In accordance with FAR 42.9 Bankruptcy the contracting officer shall take prompt action to determine the potential impact of a contractor bankruptcy on the Government in order to protect the interests of the Government.

(b) Once a bankruptcy petition is filed, an automatic stay goes into effect. This stay generally precludes any action to collect from the debtor or to interfere with the debtor's property interests. Contract closeout actions could interfere with the property interest and violate the stay. Contracts can be considered property of the bankrupt estate. Consequently, contract closeout actions should generally not be done without relief from the stay. Violation of the stay can subject responsible parties to contempt citations.

(c) Any claim against the contractor must be filed with the court in the form of a Proof of Claim. With the filing of a bankruptcy petition, the court usually will set a date by which the Proof of Claim must be filed. Potential claims against the contractor must be compiled and analyzed to determine whether a Proof of Claim is in the best interests of the Government and, if so, that information must be provided to the legal counsel.

(d) The OCFO in collaboration with the contracting officer is responsible for preparing the Proof of Claim and providing it to the cognizant US Attorney for filing with the bankruptcy court.

(e) The contracting officer should use discretionary judgement when deciding to either wait on the bankruptcy court proceedings to conclude or to produce a unilateral modification closing the contract out. If the CO awaits the resolve of court proceedings, the contract cannot be closed.

(f) If the contracting officer determines that the balance of the final contract cost/price yield a zero-balance due then the Closeout Contractor shall complete a memo to file documenting the

rationale used to proceed with Administrative Unilateral Closeout and any determination of final contract price.

(g) Prepare a unilateral modification to deobligate any excess funds and formally closeout the contract.

B-300-3 Contractor Lacks Settlement of Final Indirect Rates (Applicable to Flexible Priced Contracts).

(a) One criterion of a flexible priced contracts (cost type, time, and material, etc.) in closeout is that it must have settled final indirect rates for each year the contract is physically active. (Reference FAR 42.705-1(b). When working with a contractor that lacks establishment of final indirect rates consider the following:

(1) If the contract is overaged, the Closeout Contractor shall review the contract to see if it is a candidate for Alternate Closeout Procedures.

(2) If the contract is not a candidate,

(i) Contact the appropriate audit office and obtain any audit information that would assist in ascertaining rate reconciliation

(ii) If an audit has not been performed, submit an audit request/inquiry to HQ-DL-OP-NASA-Contract-Audit@mail.nasa.gov.

B-300-4 Contractor is Unable to Submit Supporting Indirect Cost Data.

(a) On rare occasions, contractors are unable to provide final invoice/voucher because they have not retained their financial records for a fiscal year. This could be due to natural disaster, system file failure, etc. When this happens, the contractor does not have the ability to support an incurred cost audit or the incurred cost previously billed on other contracts. When the contractor demonstrates an inability to support an incurred cost audit or incurred costs previously billed on other contracts the contracting officer may determine to administratively close the award utilizing an Administrative Unilateral Closeout. A risk assessment may be required to ensure the financial security of the contractor.

(b) The Closeout Contractor should have an understanding as to why the vendor is unable to provide the final invoice/voucher and provide a recommendation for Administrative Unilateral Closeout for CO consideration/approval.

(c) If Administrative Unilateral Closeout is deemed suitable under the circumstances, it is recommended that the contracting officer proceed with the closeout as follows (the Closeout Contractor should coordinate with contracting officer as needed):

(1) Contact the appropriate audit office and obtain an opinion as to the appropriateness of an Administrative Unilateral Closeout of the contract.

(2) Calculate the final price based on previous amounts paid to date.

(3) Complete a memo to file documenting the rationale used in the final decision to proceed with a unilateral modification.

(4) Complete a modification establishing the recommended final price as the amount previously paid to date and deobligate any excess funds.

(5) Proceed to close the contract, if applicable.

B-300-5 Contractor Fails to Submit Final Invoice.

(a) For FFP Contracts, the Acquisition Support should send a reasonable number of requests for a final invoice to the contractor. If the contractor does not submit a final invoice, the Closeout Contractor should do the following:

(1) Verify that the government has accepted all shipments/performance.

(2) Send an initial email to the contractor to include a suspense date seeking a specific date that the final invoice may be expected. (The overall suspense date should not exceed 120 days)

(3) If 60 days have passed, send a second email to the contractor advising them of the contracting officer intent to issue an Administrative Unilateral Closeout action if a final invoice is not provided within the next 60 days.

(4) If the contractor fails to respond within 120 days from the date of original notice, the Closeout Contractor prepare an administrative unilateral closeout modification for the closeout contracting officer signature and close the contract and deobligate any access funds.

(5) If the contractor is responsive over the 120-day period, the Closeout Contractor is advised to work further with the contractor to the greatest extent practical and consider closeout after final payment is remitted.

(6) Complete a memo to file explaining the rationale used in the final decision to include the number of attempts via web search to locate viable POC attempts or any other restrictions that warranted the use of a unilateral modification.

(7) Complete a unilateral modification to deobligate any excess funds and formally closeout the contract.

(b) For Cost Reimbursable & Flexible Priced Contracts, the contractor is contractually required to submit a final invoice or invoice within 120-days after settlement of final indirect cost rates.

(1) The Closeout Contractor shall:

(i) Verify that the government has accepted all shipments and/or performance.

(ii) Issue an "Initial Letter of Request for Final Invoice/Voucher" and establish a reasonable suspense. This step may have already been completed when the research and determination of the reason for non-submission was performed. If so, there is no need to issue an additional letter.

(iii) Coordinate with center contracting officer and advisors as needed.

(iv) Determine the total allowable cost IAW Audits of Indirect Cost Rates. e.) Determine the total previous payments made to the contractor

(v) Send an email to the contractor, which serves as a notice of intent to

unilaterally determine the final contract prices if the final invoices are not received within 30-days from date of the notice.

(vi) Calculate the final contract price. If it is determined that the contractor has been underpaid, state the amount due in the final unilateral determination modification. If overpayment has occurred, submit a demand letter requesting a refund from the contractor.

(vii) If it is determined that excess funds remain on the contract, deobligate those funds within the final unilateral determination modification.

(viii) Complete a memo to file documenting the rationale used in the final decision to proceed with a unilateral modification.

(ix) Prepare a final unilateral determination modification denoting Administrative Unilateral Closeout and the calculation of the final contract price for contracting officer signature. Request that the contracting officer consider including appropriate comments in any future past performance questionnaires received on this contractor.

(x) Coordinate the final package and the proposed modification through center contracting officer for signature. l.) Issue the final unilateral determination modification and closeout the contract.

(c) In situations where indirect cost rates have been settled and the contractor has failed to adhere to FAR 52.216- 7(d)(5), it is recommended the Closeout Contractor research to determine the reason for non-submission. Many times, the contractor may not be able to submit a final invoice/voucher because:

(1) They are awaiting final subcontractor costs.

(2) There is a lack of accounting staff to prepare final invoices.

(3) There is a lack of sufficient final records needed to prepare cumulative cost sheets and ultimately the final invoice.

(4) The final invoice would result in a credit balance due to the Government.

(5) The final invoice would equal $0.00

(d) The Closeout Contractor should try to work with the contractor to develop an acceptable plan for submission of the final invoice, and recommend to the contracting officer a reasonable extension for vendor submission, if necessary. If the contractor still will not submit an interim invoice, final invoice, other remedies available to the contracting officer include:

(1) Leadership Involvement.

(2) Initiate non-contractual remedies such as inclusion of comments in requests for Past Performance information on other contracts.

(3) Suspend any interim financing payments.

(4) Decrement the contractor's previously settled indirect cost rates.

(5) Withhold any fees that may be due.

(e) If the above remedies are unsuccessful or are not an option, the acquisition support should prep a unilateral modification in accordance with 52.216-7(d)(5) for contracting officer signature and execution.

B-400 Alternate Closeout Procedures for Overaged Contracts.

(a) Overaged contracts are contracts that have been physically complete for six years or more.

(b) In an effort to reduce the footprint of overaged contracts, NASA Headquarters Office of Procurement has established Alternate Closeout Procedures designed to evaluate overall risk to the Government in addition to certain criteria being met in order to negotiate the settlement of final contract cost to advance contract closeout.

(c) FAR 42.708 authorizes contracting officers responsible for contract closeout to negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of determination of final direct costs and indirect rates set forth in FAR 42.705. Contracting Officers shall consider the use of alternate closeout procedures for all cost reimbursable and flexibly priced contracts when the contract has been physically complete for six years or more.

(d) Contracting Officers shall utilize a risk assessment and discretionary judgement when identifying contracts as appropriate candidates for alternate closeout procedures and document such on the contract closeout checklist and settlement agreement. Contracting Officers must obtain the appropriate approval when utilizing Alternate Closeout Procedures before executing a settlement agreement.

(e) When the contract is in possession of the Closeout Contractor, this action shall be coordinated with the Center's Closeout Contracting Officer and presented to the HQ Closeout Manager for approval.

(f) Closeout Contractor shall prepare the final risk assessment, final closeout modification, final pre negotiation memorandum and final draft of the settlement agreement. The Center Closeout CO shall prepare Post Negotiation Memorandum and work to request any funding, if applicable.

(g) A copy of the risk assessment and proposed settlement agreement should be forwarded to the Contract Closeout Manager, HQ for approval at HQ-DL-OP-NASA-Contract-Audit@mail.nasa.gov.

(h) The risk assessment, when properly documented, will address and determine that the contractor/contract has:

(1) Expired/Canceled funds;

(2) Approved Accounting System during all unsettled years may be obtained from the NASA audit services audit inbox;

(3) No outstanding corrective actions related to accounting, purchasing, or

estimating systems that would have a material impact on the ability of the contractor to prepare an accurate certified incurred cost proposal and a complete and accurate final invoice for this contract may be obtained from the NASA audit services audit inbox;

(4) No unsettled Cost Accounting Standards (CAS) non-compliances for contracts unsettled years which would have a material impact on the ability of the contractor to complete and accurate final invoice for this contract may be obtained from the NASA audit services inbox.

(5) Has three consecutive years of incurred cost audit history

(6) Not billed in excess of established ceiling rates in the contract (if applicable)

(7) No significant/material concerns of the cognizant contract auditors

(8) No other issues that would cause the Contracting Officer to consider the need for an audit opinion before settlement of rates and direct costs such as changes to the contractor's rate structure during the unsettled years, volatility of rate fluctuations during affected periods, merger or acquisition, or special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under flexibly priced.

(9) The contractor/contract is not in litigation.

(h) Determinations of final indirect costs under the alternate closeout procedure provided for by the Allowable Cost and Payment clause at 52.216-7 shall be final for the contract it covers, and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by this settlement agreement.

(i) Indirect cost rates used in the alternate closeout procedure of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

(j) If the above criteria are met and approved by HQ Closeout Manager, the contracting officer shall-

(1) Submit a request for audit waiver (if applicable) to HQ-DL-OP-NASA-Contract-Audit@mail.nasa.gov once approved,

(2) Conduct Negotiations

(3) Request Funding for Final Invoice (this should be worked in parallel with negotiations); and

(4) Prepare a written contract specific settlement agreement conforming to the requirements of the contract.

(5) Once settlement has been reached, issue a modification closing the contract with the settlement agreement attached.

(k) All copies of final settlement agreements to include negotiation memorandums must be sent with subject line: Final Settlement Agreement - Contract Name, (Insert Contract Number) to HQ-DL-OP-NASA-Contract- Audit@mail.nasa.gov.

[PN 24-04]

APPENDIX C
DATA REQUIREMENTS DESCRIPTIONS, REQUIREMENTS STATEMENTS, AND SOLICITATION INSTRUCTIONS

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APPENDIX C
DATA REQUIREMENTS DESCRIPTIONS AND REQUIREMENT STATEMENTS

[PN 21-05]

PART 100 – INTRODUCTION

C-100 General.

This appendix contains policies regarding use of the agency-wide data requirements descriptions and requirements statements prescribed in this regulation.

C-101 Use of data requirements descriptions and requirement statements

The data requirements descriptions in this appendix provide a standardized process and format for contractor data deliverables for use in solicitations and contracts. The requirement statements provide requirements that supplement the statement of work or performance work statement. Prescriptions for use of each data requirements description and requirement statements are included in Parts 2 and 3 of this appendix, respectively.

PART 200 – DATA REQUIREMENTS DESCRIPTIONS

C-200 Purpose.

This part provides agency-wide data requirements descriptions (DRDs) that define specific documentation requirements to be provided by NASA contractors during contract performance. Contracting officers shall include DRDs in solicitations and contracts that apply to the specific acquisition. The complete listing of agency-wide DRDs can be found here.

C-201 Definitions.

As used in this appendix-

"Data Type Description" Each DRD is classified by data type as defined below:

Type 1 - All submittals of and interim changes to Type 1 DRDs require written approval from the contracting officer before formal release for use or implementation (e.g., Organizational Conflicts of Interest Plan).

Type 2 - NASA reserves a time-limited right to disapprove in writing any submittal of and interim changes to Type 2 DRDs. The contractor shall submit the required data to NASA for review within the time period established in the DRD prior to its release for use. The contractor shall clearly identify the release target date. If the data is unacceptable, the contracting officer

will notify the contractor within the time period established in the DRD from the date of submission, regardless of the intended release date. The contractor shall resubmit the information for reevaluation if disapproved. The submittal is considered approved if the contractor does not receive disapproval or an extension request from the contracting officer within the time period established in the DRD (e.g., Government Property Plan).

Type 3 – Type 3 DRDs shall be delivered by the contractor as required by the contract and do not require NASA approval.

C-202 Prescriptions for use of Data Requirements Descriptions

C-202.1 Organizational Conflicts of Interest (OCI) Plan.

Insert the Organizational Conflicts of Interest (OCI) Plan DRD in solicitations when mitigation is a potential method to resolve conflicts.

C-202.2 Diversity, Equity, Inclusion, and Accessibility (DEIA) Plan.

Insert the DEIA Plan DRD in acquisitions $5 million or greater, except for construction and commercial supply contracts and individual task/delivery orders against NASA Indefinite – Delivery, Indefinite - Quantity Contracts.

The DEIA Plan must be submitted within 30 days after contract award. The contracting officer will conduct an annual assessment of the contractor's current year's metrics, as provided within the plan, compared with the preceding year. When performing the annual assessment, if there are questions regarding DE&I, as it relates to data provided by the contractor, advice may be sought from the Center's Office of Diversity and Equal Opportunity (ODEO) Points of Contacts. The CO shall document any evidence of poor performance in the contract file and inform the contractor that a sustained decline may result in an adverse finding documented in the Contractor Performance Assessment Reporting System (CPARS).

[PN 22-01]

PART 300 – REQUIREMENTS STATEMENTS

C-300 Purpose.

This part provides requirements statements which provide supplemental statement of work or performance work statement requirements for use in solicitations and contracts. Contracting officers shall include in solicitations and contracts any requirements statements that apply to the specific acquisition. Contracting officers shall use the agency-wide Requirements Statements List template to incorporate all applicable agency-wide requirements statements into one document as an attachment to the contract. The complete listing of agency-wide requirements statements can be found here.

C-301 Prescriptions for use of Requirements Statements.

C-301.1 Foreign Travel by Contractor Employees on NASA Official Business

Insert the Foreign Travel by Contractor employees on NASA Official Business Requirement Statement in solicitations and contracts when it is anticipated that contractor employees will be required by the contract to travel international on NASA official business.

[PN 22-06]

C-301.2 Counterintelligence Briefings

Insert the Counterintelligence Briefings Requirements Statement in solicitations and contracts when it is anticipated that contractor employees will or may be required to travel internationally on official NASA business.

[PN 22-07]

C-301.3 Protecting and Preserving the Historic and Scientific Value of U.S. Government Lunar Artifacts

Insert the "Protecting and Preserving the Historic and Scientific Value of U.S. Government Lunar Artifacts" requirements statement in solicitations and contracts requirements when the resultant contract will pertain to lunar activities carried out by, for, or in partnership with NASA.

[PN 22-16]

PART 400 – SOLICITATION INSTRUCTIONS

C-400 Purpose.

This part provides additional solicitation instructions for offerors. Contracting officers shall include in solicitations any instructions that apply to the specific acquisition. The complete listing of agency-wide solicitation instructions to offerors can be found here.

C-401 Prescriptions for the use of Solicitation Instructions.

C-401.1 Financial Capabilities Assessment

Insert the solicitation instruction "Financial Capabilities Assessment" in solicitations related to a significant contract for design and development programs and projects, with a lifecycle cost of $500 million or more, or otherwise designated by the NASA Associate Administrator.

C-401.2 Electronic Proposal Delivery – Proposal Marking and Delivery Through NASA's EFSS Box

Insert the solicitation instruction "Electronic Proposal Delivery – Proposal Marking and Delivery Through NASA's EFSS Box" in solicitations when submission of electronic proposals is required.

[PN 22-13]

APPENDIX D
ENTERPRISE PRICING PROCEDURES

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D-101 Roles and Responsibilities.
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D-103 Request for Pricing Support
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D-100 Purpose.

This appendix contains policies and protocols regarding the use of the Enterprise Pricing Office (EPO) to obtain pricing support services, applicable throughout the Office of Procurement (OP) enterprise. This document establishes a framework that encourages an atmosphere of inventive pricing and provides thereby providing practical pricing guidance to enable prompt and sensible negotiations, ultimately resulting in the attainment of the most equitable and reasonable prices across the NASA's enterprise.

D-101 Roles and Responsibilities.

As used in this Appendix-

The "Enterprise Pricing Office (EPO)" is responsible for streamlining of contract closeout, audit services, cost/pricing policies, processes, and the cross utilization of cost/pricing resources and training across the OP enterprise as they relate to complex cost/price related actions.

The "Pricing Director" is responsible for providing senior leadership across OP as it relates to complex cost/price negotiations, policy and processes and is responsible for evolving the cost/price function by creating a sustainable architecture that promotes an environment of pricing innovation that offers pragmatic pricing solutions that will offer timely and realistic negotiations to ensure the best possible fair and reasonable prices are achieved across NASA's Enterprise.

The "Pricing Liaison Advocate (PLA) Representatives" oversee cost/price activity for each center. All Source Evaluation Boards (SEBs) and Contract Modifications over $50M should request EPO assistance via PALT+. For All Other Pricing Actions, please fill out and submit the pricing request form that can be found on the EPO website (EPO-Review-and-Assistance-Instructions). All follow-up questions and concerns should be routed through the PLA Representative via email to ensure timely response for support: EPO PLA inbox (hq-dl-op-nasa-epo-pla@mail.nasa.gov).

"Cost/Price Analysts" provides cost/price support services to complex services, hardware development, research and development that includes technically complex requirements, and sole source acquisitions as listed in the EPO Coordination and Review Matrix. The cost/price analyst is responsible for analyzing competitive price and cost data to ascertain cost realism and develop probable cost adjustment, if applicable, for the procurement team. Additionally, the cost/price analysts may assist the procurement team with the development of the Government Resource Estimate (GRE)/Independent Government Cost Estimate (IGCE) for all actions that require EPO review.

D-102 EPO Coordination and Review Matrix (CAM)

The EPO CAM provides official guidance to contracting professionals across the OP enterprise as it relates to the review and concurrence of documents containing pricing related content. A

copy of EPO CAM matrix and additional information can be found on the EPO website using the link below: https://nasa.sharepoint.com/sites/OP-EPO

D-103 Request for Pricing Support

The dollar threshold for which pricing support services is required is valued at $50 million or more with the exception to the following: Undefinitized Contract Actions, D&F Approval for Award Fee, and Incentive Fee Contracts, Waiver of Certified Cost or Pricing Data, Price/Cost Related Deviations, Responses to Protests, Claims, Request for Equitable Adjustment, and the Use of Economic Price Adjustment Clause.

Request for pricing support can be completed via PALT+ for all actions over $250K. All other request shall be submitted via the EPO website at: https://nasa.sharepoint.com/sites/OP-EPO/SitePages/EPO-Review-and-Assistance-Instructions(1).aspx

Requests for expedited pricing support shall be accompanied by the approval of the center Procurement Officer or Deputy Procurement Officer.

D-104 Ask a Pricer/Auditor

All pricing and audit questions related to actions without an assigned pricer/auditor shall be submitted via the EPO website as listed above.

[PN 23-11]