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SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.
1852.301 Solicitation provisions and contract clauses (Matrix).

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

SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.

1852.000 Scope of part.

This part, in conjunction with FAR part 52—

(a) Sets forth the provisions and clauses prescribed in the NFS,

(b) Gives instructions for their use, and

(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

[61 FR 40547, Aug. 5, 1996]

Subpart 1852.2—Texts of Provisions and Clauses

1852.203–70 Display of Inspector General Hotline Posters.

As prescribed in 1803.7001, insert the following clause:

DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS (JUN 2001)

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546–0001, (202) 358–1220.

[66 FR 29727, June 1, 2001]

1852.203–71 Requirement to inform employees of whistleblower rights.

As prescribed in 1803.970, use the following clause:

REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (AUG 2014)

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 1803.9 of the NASA FAR Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

[79 FR 43961, July 29, 2014, as amended at 79 FR 51501, Aug. 29, 2014; 80 FR 61994, Oct. 15, 2015]

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254].

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.204–76 Security requirements for unclassified information technology resources.

As prescribed in 1804.470–4(a), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2011)

(a) The contractor shall protect the confidentiality, integrity, and availability of NASA Electronic Information and IT resources and protect NASA Electronic Information from unauthorized disclosure.

(b) This clause is applicable to all NASA contractors and sub-contractors that process, manage, access, or store unclassified electronic information, to include Sensitive But Unclassified (SBU) information, for NASA in support of NASA's missions, programs, projects and/or institutional requirements. Applicable requirements, regulations, policies, and guidelines are identified in the Applicable Documents List (ADL) provided as an attachment to the contract. The documents listed in the ADL can be found at: *http://www.nasa.gov/offices/ocio/itsecurity/index.html*. For policy information considered sensitive, the documents will be identified as such in the ADL and made available through the Contracting Officer.

(c) *Definitions.* (1) IT resources means any hardware or software or interconnected system or subsystem of equipment, that is used to process, manage, access, or store electronic information.

(2) NASA Electronic Information is any data (as defined in the Rights in Data clause of this contract) or information (including information incidental to contract administration, such as financial, administrative, cost or pricing, or management information) that is processed, managed, accessed or stored on an IT system(s) in the performance of a NASA contract.

(3) IT Security Management Plan—This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. Unlike the IT security plan, which addresses the IT system, the IT Security Management Plan addresses how the contractor will manage personnel and processes associated with IT Security on the instant contract.

(4) IT Security Plan—this is a FISMA requirement; see the ADL for applicable requirements. The IT Security Plan is specific to the IT System and not the contract. Within 30 days after award, the contractor shall develop and deliver an IT Security Management Plan to the Contracting Officer; the approval authority will be included in the ADL. All contractor personnel requiring physical or logical access to NASA IT resources must complete NASA's annual IT Security Awareness training. Refer to the IT Training policy located in the IT Security Web site at *https://itsecurity.nasa.gov/policies/index.html*.

(d) The contractor shall afford Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA Electronic Information or to the function of IT systems operated on behalf of NASA, and to preserve evidence of computer crime.

(e) At the completion of the contract, the contractor shall return all NASA information and IT resources provided to the contractor during the performance of the contract in accordance with retention documentation available in the ADL. The contractor shall provide a listing of all NASA Electronic information and IT resources generated in performance of the contract. At that time, the contractor shall request disposition instructions from the Contracting Officer. The Contracting Officer will provide disposition instructions within 30 calendar days of the contractor's request. Parts of the clause and referenced ADL may be waived by the contracting officer, if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the 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)

[76 FR 4080, Jan. 24, 2011, as amended at 80 FR 61994, Oct. 15, 2015]

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (NOV 2004)

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10–¾ by 14–¼ inches. A ''production unit'' is one sheet, size 8–½ × 11 inches (215 × 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request

approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPR 1490.5, NASA Procedural Requirements for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[66 FR 53548, Oct. 23, 2001, as amended at 69 FR 63459, Nov. 2, 2004]

1852.209–70 [Reserved]

1852.209–71 Limitation of future contracting.

As prescribed in 1809.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507–2:

LIMITATION OF FUTURE CONTRACTING (DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements 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 of 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 complete with those other companies.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–72 [Reserved]

1852.211–70 Packaging, handling, and transportation.

As prescribed in 1811.404–70, insert the following clause:

PACKAGING, HANDLING, AND TRANSPORTATION (SEP 2005)

(a) The Contractor shall comply with NASA Procedural Requirements (NPR) 6000.1, ''Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components'', as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[65 FR 37062, June 13, 2000, as amended at 70 FR 52941, Sept. 6, 2005]

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302–570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS (JUL 2004)

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

''Emerging small business'' means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

''Service-disabled veteran-owned small business concern''—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

''Small business concern'' means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

''Veteran-owned small business concern'' means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

''Women-owned small business concern'' means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).* (1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN:_____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049–4;

[ ] Other _____.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

TIN_____.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror

represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness

Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

—50 or fewer	—$1 million or less.
—51–100	—$1,000,001–$2 million.
—101–250	—$2,000,001–$3.5 million.
—251–500	—$3,500,001–$5 million.
—501–750	—$5,000,001–$10 million.
—751–1000	—$10,000,001–$17 million.
—Over 1000	—Over $17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(7)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed $25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) [The offeror shall check the category in which its ownership falls]:

— Black American.
— Hispanic American.
— Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
— Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
— Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
— Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Buy American Act Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act-Supplies.''

(2) Foreign End Products:

Line Item No. and Country of Origin

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(f)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act''

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act: NAFTA Country or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act.'' The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No. and Country of Origin

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (JAN 2004). If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act'':

Canadian End Products:

Line Item No.

(List as necessary)

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (JAN 2004). If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act'':

Canadian or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

(ii) The offeror shall list as other end products those end products that are not U.S.-

made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line Item No. and Country of Origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (g)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at FAR 22.1503(b).]

(1) Listed end products.

Listed End Product and Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(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.''

[67 FR 38905, June 6, 2002, as amended at 69 FR 13261, Mar. 22, 2004; 69 FR 44610, July 27, 2004]

1852.213–71 Evaluation—Other Than Commercial Items.

As prescribed in 1813.302–570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS—JUN 2002

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[67 FR 38905, June 6, 2002, as amended at 67 FR 50824, Aug. 6, 2002]

1852.214–70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201–670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING DESCRIPTIVE LITERATURE (DEC 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that ''Data are subject to change without notice,'' ''Prices subject to change without notice,'' or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202–5.]

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–71 Grouping for Aggregate Award.

As prescribed in 1814.201–670(b), insert the following provision:

GROUPING FOR AGGREGATE AWARD (MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

[*Insert the item numbers and/or descriptions*].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

[61 FR 47082, Sept. 6, 1996, as amended at 81 FR 36182, June 6, 2016]

1852.214–72 Full quantities.

As prescribed in 1814.201–670(c), insert the following provision:

FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

[61 FR 47082, Sept. 6, 1996, as amended at 81 FR 3339, Jan. 21, 2016]

1852.215–77 Preproposal/pre-bid conference.

As prescribed in 1815.209–70(a), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (APR 2015)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

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

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

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

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 80 FR 12945, Mar. 12, 2015; 80 FR 61994, Oct. 15, 2015]

EFFECTIVE DATE NOTE: At 82 FR 38853, Aug. 16, 2017, 1852.215–77 was amended by removing from paragraph (e) last sentence the words ''using the NAIS Electronic Posting System'', effective Oct. 16, 2017.

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)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9965, Feb. 27, 1998; 63 FR 32764, June 16, 1998]

1852.215–79 Price adjustment for "Make- or-Buy" changes.

As prescribed in 1815.408–70(b), insert the following clause:

PRICE ADJUSTMENT FOR ''MAKE-OR-BUY'' CHANGES (DEC 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998; 81 FR 24501, Apr. 26, 2016]

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 sheet, 8½″ × 11″, with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8½″ × 11″ pages. The metric standard format most closely approximating the described standard 8½″ × 11″ size may also be used. Other limitations/instructions identified as follows: (*fill-in*, if there are other limitations/instructions).

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

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

[62 FR 3483, Jan. 23, 1997, as amended at 63 FR 9966, Feb. 27, 1998; 80 FR 12946, Mar. 12, 2015; 80 FR 68778, Nov. 6, 2015]

1852.215–84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN (NOV 2011)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at: *http://prod.nais.nasa.gov/pub/pub_library/Omb.html*. 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)

Alternate I (JUN 2000). As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

[62 FR 3484, Jan. 23, 1997, as amended at 65 FR 38777, June 22, 2000; 68 FR 62023, Oct. 31, 2003; 76 FR 72329, Nov. 23, 2011]

1852.215–85 Proposal adequacy checklist.

As prescribed in 1815.408–70(c), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (MAR 2014)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
	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?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
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?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
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 item''	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)? c. For proposed commercial items ''of a type'', or ''evolved'' or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
18. FAR 15.408, Table 15–2, Section II Paragraph A(1).	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?		
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.)		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
	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 15.408 Table 15–2, Section II, Paragraphs A, B, C, and D.	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment?		
33. FAR 52.232–28 ...	If the offeror is proposing Performance-Based Payments—did the offeror comply with FAR 52.232–28?		
34. FAR 15.408(n) .... FAR 52.215–22 FAR 52.215–23	Excessive Pass-through Charges—Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?		

(End of provision)

[79 FR 10688, Feb. 26, 2014]

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)

[82 FR 34419, July 25, 2017]

1852.216–73 Estimated cost and cost sharing.

As prescribed in 1816.307–70(a), insert the following clause:

ESTIMATED COST AND COST SHARING (DEC 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than ____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert ''Limitation of Cost'' or ''Limitation of Funds''] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307–70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE (DEC 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–75 Payment of fixed fee.

As prescribed in 1816.307–70(c), insert the following clause:

PAYMENT OF FIXED FEE (DEC 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–76 Award fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS (APR 2012)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) The Contracting Officer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contract's total potential award fee or $100,000, whichever is less.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [insert ''will'' or ''will not'', as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert ''will'' or ''will not'', as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[77 FR 18106, Mar. 27, 2012]

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)

[77 FR 18106, Mar. 27, 2012, as amended at 81 FR 50366, Aug. 1, 2016]

1852.216–78 Firm fixed price.

As prescribed in 1816.202–70, insert the following clause:

FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is $ [Insert the appropriate amount].

(End of clause)

[62 FR 3485, Jan. 23, 1997]

1852.216–80 Task ordering procedure.

As prescribed in 1816.506–70, insert the following clause:

TASK ORDERING PROCEDURES (OCT 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within ____ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

Alternate I (OCT 1996). As prescribed in 1816.506–70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

(2) Task ceiling price.

(3) Cost and hours incurred to date for each issued task.

(4) Costs and hours estimated to complete each issued task.

(5) Significant issues/problems associated with a task.

(6) Cost summary of the status of all tasks issued under the contract.

[62 FR 3485, Jan. 23, 1997]

1852.216–81 Estimated cost.

As prescribed in 1816.307–70(d), insert the following clause:

ESTIMATED COST (DEC 1988)

The total estimated cost for complete performance of this contract is $ [Insert total estimated cost of the contract]. See

FAR clause 52.216–11, Cost Contract—No Fee, of this contract.

(End of clause)

[62 FR 3486, Jan. 23, 1997]

1852.216–83 Fixed price incentive.

As prescribed in 1816.406–70(c), insert the following clause:

FIXED PRICE INCENTIVE (OCT 1996)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.]

The cost sharing for target cost underruns is: Government ____ percent; Contractor ____ percent.

The cost sharing for target cost overruns is: Government ____ percent; Contractor ____ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–84 Estimated cost and incentive fee.

As prescribed in 1816.406–70(d), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (OCT 1996)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____.

The maximum fee is $_____.

The minimum fee is $_____.

The cost sharing for cost underruns is: Government ____ percent; Contractor ____ percent.

The cost sharing for cost overruns is: Government ____ percent; Contractor ____ percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–85 Estimated cost and award fee.

As prescribed in 1816.406–70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE (SEP 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

(End of clause)

Alternate I (SEP 1993). As prescribed in 1816.405–70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is $_____. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$*total potential award fee amount, including any base fee)*].

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–87 [Reserved]

1852.216–88 Performance incentive.

As prescribed in 1816.406–70(f), insert the following clause:

PERFORMANCE INCENTIVE (APR 2015)

(a) A performance incentive applies to the following item(s) under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called ''unit(s) of measurement,'' e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes when the item is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) *Standard performance level.* At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) ____ is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ (3) ____ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) *Negative incentive.* The Contractor will pay to the Government a negative incentive amount for each item that fails to achieve the standard performance level. The amount

to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ (5) ____. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within [*insert number of months or years*] after the date of acceptance by the Government, the Contractor will be paid [*insert percentage*] of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) descriptor and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402–270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402–270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997; 80 FR 12946, Mar. 12, 2015; 80 FR 50212, Aug. 19, 2015]

1852.216–89 Assignment and release forms.

As prescribed in 1816.307–70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS (AUG 2016)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment:

NASA Form 778, Contractor's Release;

NASA Form 779, Assignee's Release;

NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253–1, Computer Generated Forms.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 81 FR 50366, Aug. 1, 2016]

1852.216–90 Allowability of legal costs incurred in connection with a whistleblower proceeding.

As prescribed in 1816.307–70(g), use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING (AUG 2014)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112–239), notwithstanding FAR clause 52.216–7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205–47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled ''Contractor employees: protection from reprisal for disclosure of certain information;'' and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)

[79 FR 43961, July 29, 2014, as amended at 79 FR 51501, Aug. 29, 2014; 80 FR 61994, Oct. 15, 2015]

1852.217–70 [Reserved]

1852.217–71 Phased acquisition using down-selection procedures.

As prescribed in 1817.7002(a), insert the following clause:

PHASED ACQUISITION USING DOWN-SELECTION PROCEDURES (APR 2015)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be 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 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000; 76 FR 72330, Nov. 23, 2011; 80 FR 12946, Mar. 12, 2015; 80 FR 75843, Dec. 4, 2015]

1852.217–72 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1817.7002(b), insert the following clause:

PHASED ACQUISITION USING PROGRESSIVE COMPETITION DOWN-SELECTION PROCEDURES (NOV 2011)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase

1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of _____ [indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be 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 to all the material furnished to the Phase 1 contractors that is necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase 2.

[Insert draft Phase 2 evaluation factors (and subfactors, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

[63 FR 56093, Oct. 21, 1998, as amended at 65 FR 30013, May 10, 2000; 76 FR 72330, Nov. 23, 2011; 81 FR 24501, Apr. 26, 2016; 81 FR 71638, Oct. 18, 2016]

1852.219–11 Special 8(a) contract conditions.

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

SPECIAL 8(a) CONTRACT CONDITIONS (APR 2015)

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

_____

_____

_____

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

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

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

(End of clause)

[80 FR 12946, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.219–18 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)

[80 FR 12946, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.219–73 Small business subcontracting plan.

As prescribed in 1819.708–70(a), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN (MAY 1999)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, ''Small Business Subcontracting Plan.'' The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 64 FR 25215, May 11, 1999]

1852.219–74 [Reserved]

1852.219–75 Individual Subcontracting Reports.

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

INDIVIDUAL SUBCONTRACTING REPORTS (APR 2015)

When submitting Individual Subcontracting Reports in eSRS in accordance with FAR 52.219–9(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)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.219–76 [Reserved]

1852.219–77 NASA Mentor-Protégé Program.

As prescribed in 1819.7215, insert the following clause:

NASA MENTOR-PROTÉGÉ PROGRAM (APR 2015)

(a) Prime contractors are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

(1) Mentors, which are large businesses and prime contractors with at least one active and approved NASA subcontracting plan;

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, meeting the qualifications defined in FAR part 2, Definitions of Parts and Term, active NASA SBIR Phase II companies or nonprofit agencies employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

(3) Mentor-protégé agreements endorsed by the cognizant NASA centers and approved by the NASA Office of Small Business Programs (OSBP);

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7208.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing

technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSBP, Washington, DC 20546, (202) 358–2088, for further information.

(End of clause)

[74 FR 25676, May 29, 2009, as amended at 80 FR 12947, Mar. 12, 2015; 80 FR 50212, Aug. 19, 2015]

1852.219–79 Mentor requirements and evaluation.

As prescribed in 1819.7215, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (APR 2015)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés.

Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, as defined in FAR part 2, Definitions of Parts and Terms, active NASA SBIR/STTR Phase II companies and nonprofit agencies employing the blind or severely handicapped as defined in 41 CFR chapter 51.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) To what extent the entities' participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

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

(c) Semiannual reports shall be submitted by the mentor and the protégé to the cognizant NASA center and NASA Headquarters Office of Small Business Programs (OSBP), following the semiannual report template found on the Web site at *http://www.osbp.nasa.gov*.

(d) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments, as it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 80 FR 12947, Mar. 12, 2015; 80 FR 50212, Aug. 19, 2015]

1852.219–80 Limitation on subcontracting—SBIR Phase I program.

As prescribed in 1819.7302(a), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE I PROGRAM (OCT 2006)

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–81 Limitation on subcontracting—SBIR Phase II program.

As prescribed in 1819.7302(b), insert the following clause:

LIMITATION ON SUBCONTRACTING—SBIR PHASE II PROGRAM (OCT 2006)

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–82 Limitation on subcontracting—STTR program.

As prescribed in 1819.7302(c), insert the following clause:

LIMITATION ON SUBCONTRACTING—STTR PROGRAM (OCT 2006)

The Contractor shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–83 Limitation of the principal investigator—SBIR program.

As prescribed in 1819.7302(d), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—SBIR PROGRAM (OCT 2006)

The primary employment of the principal investigator (PI) shall be with the small business concern (SBC)/Contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–84 Limitation of the principal investigator—STTR program.

As prescribed in 1819.7302(e), insert the following clause:

LIMITATION OF THE PRINCIPAL INVESTIGATOR—STTR PROGRAM (OCT 2006)

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.219–85 Conditions for final payment—SBIR and STTR contracts.

As prescribed in 1819.7302(f), insert the following clause:

CONDITIONS FOR FINAL PAYMENT—SBIR AND STTR CONTRACTS (OCT 2006)

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;

2. No other Federal funding award has been received for essentially equivalent work performed under this contract;

3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;

4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by the Contracting Officer on (*insert date of approval or modification number.*);

5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;

6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on (*insert date of approval or modification number*); and

7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on (*insert date of approval or modification number*).

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 USC, Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of clause)

[71 FR 61688, Oct. 19, 2006]

1852.223–70 Safety and Health Measures and Mishap Reporting.

As prescribed in 1823.7001(a), insert the following clause:

SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall maintain an effective worksite safety and health program with organized and systematic methods to—

(1) Comply with Federal, State, and local safety and occupational health laws and with the safety and occupational health requirements of this contract;

(2) Describe and assign the responsibilities of managers, supervisors, and employees;

(3) Inspect regularly for and identify, evaluate, prevent, and control hazards;

(4) Orient and train employees to eliminate or avoid hazards; and

(5) Periodically review the program's effectiveness. Authorized Government representatives shall have access to and the right to examine the work site and related records under this Contract in order to determine the adequacy of the Contractor's safety and occupational health measures.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health-measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify the Contracting Officer or a designee any Type A, B, C, or D Mishap, or close calls as defined in NASA Procedural Requirement (NPR) 8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall cooperate with any Government-authorized investigation of Type A, B, C, or D Mishaps, or Close Calls reported pursuant to paragraph (d) of this clause by providing access to employees; and relevant information in the possession of the Contractor regarding the mishap or close call.

(f)(1) The Contracting Officer may notify the Contractor of any noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer will notify the Contractor orally, with written confirmation. The Contractor shall promptly take corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may—

(i) Invoke the stop-work order clause in this contract;

(ii) Require the Contractor to remove and replace Contractor or subcontractor personnel who fail to comply with or violate applicable requirements of this clause;

(iii) Record the Contractor's failure to comply in the appropriate databases of past performance; and

(iv) Consider the Contractor's failure to comply in any responsibility determination or evaluation of past performance.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g) in all subcontracts above the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

(End of clause)

[80 FR 73677, Nov. 25, 2015]

1852.223–71 Authorization for Radio Frequency Use.

As prescribed in 1823.7101, insert the following clause:

AUTHORIZATION FOR RADIO FREQUENCY USE (APR 2015)

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

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

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

(End of clause)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.223–72 Safety and health (short form).

As prescribed in 1823.7001(f), insert the following clause:

SAFETY AND HEALTH (SHORT FORM) (JUL 2015)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA is committed to protecting the safety and health of the public, our team members, and those assets that the Nation entrusts to the Agency.

(b) The Contractor shall have a documented, comprehensive and effective health and safety program with a proactive process to identify, assess, and control hazards and take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c) in subcontracts that exceed the simplified acquisition threshold where work will be conducted completely or partly on Federally-controlled facilities.

(End of clause)

[80 FR 36722, June 26, 2015]

1852.223–73 Safety and health plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (JUL 2015)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal. The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts or subcontract effort where the work will be conducted completely or partly on a Federally-controlled facility.

(c) This plan, as approved by the Contracting Officer, will be incorporated into any resulting contract.

(End of clause)

Alternate I (JUL 2015)

As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan. The plan shall be submitted within the time specified by the Contracting Officer. Failure

to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

[80 FR 36722, June 26, 2015, as amended at 81 FR 12420, Mar. 9, 2016; 81 FR 24501, Apr. 26, 2016; 81 FR 71638, Oct. 18, 2016]

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–2, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (NOV 2015)

(a) Definitions.

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

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

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

(b)(1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for pre-employment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) In determining which positions to designate as ''sensitive,'' the contractor may use the guidelines for determining testing designated positions in NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, as a guide for the criteria and in designating ''sensitive'' positions for contractor employees.

(3) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(4) The Contractor's program shall conform to the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services (73 FR 71858) and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs.''

(i) The Contractor shall test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates and Phencyclidine (PCP) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Mandatory Guidelines, Section 3.1, and 49 CFR 40.85.

(ii) The contractor shall comply with the requirements and procedures for alcohol testing at 49 CFR part 40.

(iii) The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements this clause.

(5) The contractor shall conduct post-accident testing when the contractor determines the employee's actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed $20,000. Upon request, the Contractor shall provide the results of post-accident testing to the Contracting Officer.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[61 FR 7226, Feb. 27, 1996, as amended at 69 FR 60968, Oct. 14, 2004; 80 FR 60554, Oct. 7, 2015]

1852.223–75 Major breach of safety or security.

As prescribed in 1823.7001(e)(1), insert the following clause:

MAJOR BREACH OF SAFETY OR SECURITY (FEB 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

Alternate I (FEB 2006) As prescribed in 1823.7001(e)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any

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

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(End of clause)

[65 FR 37061, June 13, 2000, as amended at 65 FR 70316, Nov. 22, 2000; 66 FR 18053, Apr. 5, 2001; 67 FR 7618, Feb. 20, 2002; 71 FR 8989, Feb. 22, 2006; 81 FR 24501, Apr. 26, 2016]

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)

[68 FR 43334, July 22, 2003, as amended at 80 FR 50212, Aug. 19, 2015]

1852.225–8 Duty-free entry of space articles (FEB 2000).

As prescribed in 1825.1101(e), add the following paragraph (k) to the basic clause at FAR 52.225–8:

(k) The following supplies will be given duty-free entry:
[Insert the supplies that are to be accorded duty-free entry.]

(End of addition)

[65 FR 10033, Feb. 25, 2000]

1852.225–70 Export Licenses.

As prescribed in 1825.1103–70(b), insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120–130, and the Export Administration Regulations (EAR), 15 CFR parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

Alternate I (FEB 2000). As prescribed in 1825.1103–70(b), add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design,

development, production, or manufacture of any defense article.

[65 FR 6916, Feb. 11, 2000, as amended at 65 FR 10033, Feb. 25, 2000]

1852.225–72 [Reserved]

1852.227–11 Patent Rights—Ownership by the Contractor (APR 2015).

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

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

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

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

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

(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site *http://invention.nasa.gov*.

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

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

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

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

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

(End of addition)

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

(End of addition)

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

(End of addition)

(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization. At all tiers, the New Technology—Other than a Small Business Firm or Nonprofit Organization clause shall be modified to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(End of substitution)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

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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This work was authored by employees of [*insert the name of the Contractor*] under Contract No. [*insert contract number*] with the National Aeronautics and Space Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, or allow others to do so, for United States Government purposes. All other rights are reserved by the copyright owner.

(End of notice)

(End of addition)

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

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(End of notice)

(End of addition)

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

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

(iii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(4)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, a claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(End of addition)

[80 FR 12947, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.227–17 Rights in data—Special works (JUL 1997).

As prescribed in 1827.409(i), add the following paragraph (f) to the basic clause at FAR 52.227–17:

(f) Whenever the words ''establish'' and ''establishment'' are used in this clause, with reference to a claim to copyright, they shall be construed to mean ''assert'' and ''assertion'', respectively.

(End of addition)

[60 FR 47312, Sept. 12, 1995. Redesignated at 61 FR 5315, Feb. 12, 1996, as amended at 62 FR 36734, July 9, 1997]

1852.227–19 Commercial computer software—Restricted rights (JUL 1997).

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227–19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth

in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227–19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990, as amended at 55 FR 47480, Nov. 14, 1990; 55 FR 53153, Dec. 27, 1990; 62 FR 36734, July 9, 1997]

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

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

NEW TECHNOLOGY—OTHER THAN A SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION (APR 2015)

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

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

''Made'' means—

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

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

''Nonprofit organization'' means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

''Practical application'' means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

''Reportable item'' means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

''Small business firm'' means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the criteria and size standard adopted in the FAR Subpart 2.1 definitions for ''small business concern'' and for ''small business subcontractor'' will be used.)

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

(b) *Allocation of principal rights*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the National Aeronautics and Space Act (51 U.S.C. 20135(b)) (hereinafter ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item in accordance with paragraph (e)(2) of this clause the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver as described in paragraph (b)(3) of this clause, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding

the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive all or any part of the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, provide procedures for the Contractor to submit petitions (requests) for waiver of rights and guidance for NASA in acting on petitions for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, the Contractor may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any invention or class of inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

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

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

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

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

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention in which the Government has title and in any resulting patent, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. The Contractor's license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revoking or modifying the Contractor's license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Contractor's obligations.

(1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology—Other Than a Small Business Firm or Nonprofit Organization clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual

reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose in writing each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology—Other Than a Small Business Firm or Nonprofit Organization clause or within six months after the Contractor becomes aware that a reportable item has been made, whichever is earlier, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall identify the inventor(s) or innovator(s) and this contract under which the reportable item was made. It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, sale or offer for sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any sale, offer for sale, or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (including computer software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site *http://invention.nasa.gov*.

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim new technology summary reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions).

(ii) A final new technology summary report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to paragraph 27.302(j) of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contracting Officer may require the Contractor to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim new technology summary reports pursuant to paragraph (e)(4)(i) of this clause or a final new technology summary report pursuant to paragraph (e)(4) (ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final new technology summary report pursuant to paragraph (e)(4)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; or

(ii) Include the clause at FAR 52.227–11, as modified by 1852.227–11, (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

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

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract hereunder (regardless of tier) by identifying the subcontractor, the applicable patent rights clause in the subcontract, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

[80 FR 12948, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015; 81 FR 13747, Mar. 15, 2016]

1852.227–71 Requests for Waiver of Rights to Inventions.

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

[80 FR 12950, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

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

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

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (APR 2015)

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

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

(End of clause

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.227–84 Patent Rights Clauses.

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

PATENT RIGHTS CLAUSES (APR 2015)

This solicitation contains the patent rights clauses of FAR 52.227–11 (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227–11 shall not apply.

(End of provision)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.227–85 Invention Reporting and Rights—Foreign.

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

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 2015)

(a) As used in this clause, the term ''invention'' means any invention, discovery or improvement, and ''made'' means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the foreign country in which this contract is to be performed. As to such foreign country, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that foreign country for each such invention. Where Contractor does not elect to file such patent application for any such invention in that foreign country, full right, title and interest in and to such invention in that foreign country shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to

the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions required to be reported under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause (suitably modified to substitute the subcontractor in place of the Contractor) and the name and address of the Contracting Officer.

(End of clause)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

1852.227–86 Commercial Computer Software License.

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

COMMERCIAL COMPUTER SOFTWARE LICENSE (APR 2015)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract. Those portions of the vendor's/contractor's standard commercial license or lease agreement that conflict with Federal law (*e.g.,* indemnity provisions or choice of law provisions that specify other than Federal law) are not incorporated into and made a part of this purchase order/contract and do not apply to any computer software delivered under this purchase order/contract.

(b) If the vendor/contractor does not propose its standard commercial software license until after this purchase order/contract has been issued, or until at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, no document associated with the aforementioned activities shall alter the terms of this clause unless such document explicitly references this clause and an intent to amend this clause and is signed by the NASA Contracting Officer.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government, or Government contractors or their subcontractors at any tier, except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2)(i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is otherwise available without disclosure restrictions, it is licensed to the Government, without disclosure restrictions, with the rights in paragraphs (d)(2) and (3) of this clause.

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

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

(End of clause)

[80 FR 12951, Mar. 12, 2015, as amended at 80 FR 50212, Aug. 19, 2015]

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

As prescribed in 1827.409(m)(1), insert the following clause:

GOVERNMENT–FURNISHED COMPUTER SOFTWARE AND RELATED TECHNICAL DATA (APR 2015)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contractor has released or disclosed such GFCS or related technical data.

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

(End of clause)

[80 FR 12952, Mar. 12, 2015, as amended at 80 FR 61994, Oct. 15, 2015; 81 FR 24501, Apr. 26, 2016]

1852.228–70 Aircraft ground and flight risk.

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other 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 hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely 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 requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) ''Contractor's managerial personnel'' means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of

good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due

under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

[61 FR 55772, Oct. 29, 1996]

1852.228–71 Aircraft flight risks.

(a) As prescribed in 1828.311–270(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 seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to

the damage, loss, or destruction shall be taken into consideration.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 61 FR 55774, Oct. 29, 1996; 81 FR 24501, Apr. 26, 2016]

1852.228–75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

''The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy.''

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

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

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

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

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

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

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

(2) ''*Damage*'' means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage.

(3) ''*Launch Vehicle*'' means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

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

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

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

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

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

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

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

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

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

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

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

(c) Cross-waiver of liability:

(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

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

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

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

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

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

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

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

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

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

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

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

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

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

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

[77 FR 59342, Sept. 27, 2012]

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

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

CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (OCT 2012)

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

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

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

(2) ''*Damage*'' means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) ''*Launch Vehicle*'' means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

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

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

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

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

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

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

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

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

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

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

NOTE TO PARAGRAPH (a)(7): The terms ''contractors'' and ''subcontractors'' include suppliers of any kind.

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

(c) Cross-waiver of liability:

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party;

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

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

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

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

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

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

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

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

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

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

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

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

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

[77 FR 59342, Sept. 27, 2012]

1852.228–80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311–270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY (SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228–7, Insurance—Liability to Third Persons, and the associated NFS clause 1852.228–81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution. the clause at NFS 1852.228–82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

[65 FR 54440, Sept. 8, 2000]

1852.228–81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311–270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228–7, Insurance—Liability to Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228–7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.228–82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311–270(d), insert the following clause:

INSURANCE—TOTAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to

property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[65 FR 54440, Sept. 8, 2000]

1852.231–70 Precontract costs.

As prescribed in 1831.205–70, insert the following clause:

PRECONTRACT COSTS (JUN 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[60 FR 29505, June 5, 1995]

1852.231–71 Determination of compensation reasonableness.

As prescribed at 1831.205–671, insert the following provision.

DETERMINATION OF COMPENSATION REASONABLENESS (APR 2015)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222–46, ''Evaluation of Compensation for Professional Employees.''

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fail within the scope of any classification listed in the applicable wage determination.

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

(End of provision)

[62 FR 4474, Jan. 30, 1997, as amended at 80 FR 12953, Mar. 12, 2015; 81 FR 71638, Oct. 18, 2016]

1852.232–70 NASA modification of FAR 52.232–12.

As prescribed at 1832.412–70, make the following modifications:

NASA MODIFICATION OF FAR 52.232–12, (MAR 1998)

(a) *Basic clause.* (1) In paragraph (e), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *.''

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

(b) Alternate II (if incorporated in the contract). In paragraph (e), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *.''

(c) Alternate V (if incorporated in the contract). (1) Substitute the following for paragraph (b): ''(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contracting office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition

Regulation, other applicable regulations referenced in part 31, or subpart 1831.2.''

(2) In paragraph (d), Maximum Payment, in the sentence that begins ''When the sum of,'' change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *.''

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

(4) If this is a Phase I contract awarded under the SBIR or STTR programs, delete paragraph (a) and substitute the following: ''(a) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked ''Small Business Innovation Research Contract'' or ''Small Business Technology Transfer Contract,'' as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments.''

(End of clause)

[63 FR 14040, Mar. 24, 1998, as amended at 80 FR 12953, Mar. 12, 2015]

1852.232–77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705–270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items ____ through ____, the sum of $____ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until ____.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on

that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.232–79 Payment for on-site preparatory costs.

As prescribed in 1832.111–70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS (SEP 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232–80 Submission of vouchers for payment.

As prescribed in 1832.908–70, insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT (SEP 2016)

(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 electronically 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 designated in the payment clause(s) contained in this contract will begin on the date a proper request for payment is received by the NSSC payment office specified in paragraphs (a) and (b) of this section. Vouchers shall be prepared in accordance with the guidance provided by the NSSC at the following Web site: *https://answers.nssc.nasa.gov/app/answers/detail/a_id/6643*.

(2) Vouchers 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) 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.

(ii) Breakdown of billed other direct costs (ODCs) and associated contractor generated supporting documentation for billed ODCs.

(iii) Indirect rate(s) used to calculate the amount of billed indirect expenses.

(d) *Non-electronic payment.* The Contractor may submit a voucher using other than the steps described at NSSC's Vendor Payment information through any of the means described at *https://www.nssc.nasa.gov/vendorpayment,* if 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. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment when the Government-wide commercial purchase card is used as the method of payment.

(2) The contract includes provision allowing the contractor to submit vouchers using other than the steps prescribed at NSSC's

Vendor Payment information Web site. 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.* The NSSC Payment Office will notify the contractor of any apparent error, defect, or impropriety in a voucher within seven calendar days of receipt by the NSSC Payment Office. Inquiries regarding requests for payment should be directed to the NSSC as specified in paragraph (b) of this section.

(f) *Other payment clauses.* In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(g) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate payment request for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[81 FR 63145, Sept. 14, 2016]

1852.232–81 Contract funding.

As prescribed in 1832.705–270(b), insert the following clause:

CONTRACT FUNDING (JUN 1990)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $_____. This allotment is for [Insert applicable item number(s), task(s), or work description] _____ and covers the following estimated period of performance: _____.

(b) An additional amount of $_____ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 57 FR 40856, Sept. 8, 1992]

1852.232–82 Submission of requests for progress payments.

As prescribed in 1832.502–470, insert the following clause:

SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS (MAR 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233–70 Protests to NASA.

As prescribed in 1833.106–70, insert the following provision:

PROTESTS TO NASA (DEC 2015)

(a) In lieu of a protest to the United States Government Accountability Office (GAO), bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33) directly to the Contracting Officer for consideration by the Agency. Alternatively, bidders or offerors may request an independent review by the Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Such reviews are separate and distinct from the Ombudsman Program described at 1815.7001.

(b) Bidders or offerors shall specify whether they are submitting a protest to the Contracting Officer or requesting an independent review by the Assistant Administrator for Procurement.

(c) Protests to the Contracting Officer shall be submitted to the address or email specified in the solicitation (email is an acceptable means for submitting a protest to the Contracting Officer). Alternatively, requests for independent review by the Assistant Administrator for Procurement shall be addressed to the Assistant Administrator for Procurement, NASA Headquarters, Washington, DC 20546–0001.

(End of provision)

[80 FR 36723, June 26, 2015, as amended at 80 FR 75843, Dec. 4, 2015]

1852.234–1 Notice of Earned Value Management System.

As prescribed in 1834.203–70(a), insert the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)–748 Standard, Earned Value Management Systems (current version at time of solicitation).

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan

for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines in ANSI/EIA–748;

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

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Describe how the offeror will ensure EVMS compliance for each subcontractor subject to the flowdown requirement in paragraph (c) whose EVMS has not been recognized by the Cognizant Federal Agency as compliant according to paragraph (a);

(vi) Provide documentation describing the process and results, including Government participation, of any third-party or self-evaluation of the system's compliance with the EVMS guidelines; and

(vii) If the value of the offeror's proposal, including options, is $50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. Guidance can be found in the] Department of Defense Earned Value Management Implementation Guide (*https://acc.dau.mil/CommunityBrowser.aspx?id=19557*) as well as in the National Defense Industrial Association (NDIA) Earned Value Management Systems Acceptance Guide (*http://www.ndia.org/divisions/divisions/procurement/pages/programsystemcommittee.aspx*).

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's EVMS implementation plan prior to contract award.

(c) The offeror shall identify in its offer the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the EVMS requirement. Prior to contract award, the offeror and NASA shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision.

(End of provision)

[71 FR 66121, Nov. 13, 2006, as amended at 80 FR 12953, Mar. 12, 2015]

1852.234–2 Earned Value Management System.

As prescribed in 1834.203–70(b) insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (NOV 2006)

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that has been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines specified in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)—748 Standard, Industry Guidelines for Earned Value Management Systems (current version at the time of award) to manage this contract; and

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

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing EVMS that is compliant with the guidelines in the ANSI/EIA–748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance/validation. The Contractor shall follow and implement the approved compliance/validation plan in a timely fashion. The Government will conduct a Compliance Review to assess the 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.

[71 FR 66121, Nov. 13, 2006, as amended at 80 FR 12953, Mar. 12, 2015]

1852.235–70 Center for AeroSpace Information.

As prescribed in 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION (DEC 2006)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (*http://www.sti.nasa.gov*) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a NASA

repository and database of research information, which may enhance contract performance.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) Information regarding CASI and the services available can be obtained at the Internet address contained in paragraph (a) of this clause.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 71 FR 71073, Dec. 8, 2006]

1852.235–71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided*, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235–72 Instructions for responding to NASA Research Announcements.

As prescribed in 1835.070(c), insert the following provision:

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (JUL 2016)

(a) *General.* (1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate award instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. A grant, cooperative agreement, or other agreement resulting from NRAs are subject to policies and procedures outlined in the Guidebook for Proposers Responding to a NASA Funding Announcement, 2 CFR part 1800, 14 CFR part 1274, or other agreement policy. Any proposal from a large business concern that may result in the award of a contract, which exceeds $5,000,000 and has subcontracting possibilities should include a small business subcontracting plan in accordance with the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(Subcontract plans for contract awards below $5,000,000, will be negotiated after selection.)

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to

legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) NRA-Specific Items. Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) *Transmittal letter or prefatory material.* (i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, 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 roposal 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.

[62 FR 4475, Jan. 30, 1997, as amended at 64 FR 48561, Sept. 7, 1999; 65 FR 3153, Jan. 20, 2000; 67 FR 30604, May 7, 2002; 67 FR 61520, Oct. 1, 2002; 69 FR 63460, Nov. 2, 2004; 70 FR 74207, Dec. 15, 2005; 81 FR 41238, June 24, 2016]

1852.235–73 Final Scientific and Technical Reports.

As prescribed in 1835.070(d) insert the following clause:

FINAL SCIENTIFIC AND TECHNICAL REPORTS (DEC 2006)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, 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 reports required by 1852.235–74 when included in the contract, without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. Should the Contractor seek to publish or otherwise disseminate the final report, or any additional reports required by 1852.235–74 if applicable, as delivered to NASA under this contract, the Contractor may do so once NASA has completed its document availability authorization review, and availability of the report has been determined.

Alternate I (FEB 2003) As prescribed by 1835.070(d)(1), insert the following as paragraph (e) of the basic clause:

(e) The data resulting from this research activity is ''fundamental research'' which will be broadly shared within the scientific community. No foreign national access or dissemination restrictions apply to this research activity. The Contractor may publish, release, or otherwise disseminate data produced during the performance of this contract, including the final report, without prior review by NASA for export control or national security purposes. However, NASA retains the right to review the final report to

ensure that proprietary information, which may have been provided to the Contractor, is not released without authorization and for consistency with NASA publication standards. Additionally, the Contractor is responsible for reviewing any publication, release, or dissemination of the data for conformance with other restrictions expressly set forth in this contract, and to the extent it receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for compliance with such restrictive markings.

Alternate II (DEC 2005) As prescribed by 1835.070(d)(2), insert the following as paragraph (e) of the basic clause:

(e) Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; or, to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor shall not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report and any additional reports required by 1852.235–74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined.

(f) All publications of any material based on or developed under NASA sponsored projects shall include an acknowledgement similar to the following:

''The material is based upon work supported by the National Aeronautics and Space Administration under Contract Number XXXX.''

Except for articles or papers published in scientific, technical or professional journals, the exposition of results from NASA supported research shall also include the following disclaimer:

''Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration.''

Alternate III (JAN 2005) As prescribed by 1835.070(d)(3), insert the following as paragraph (e) of the basic clause:

(e) The Contractor's rights in data are defined in FAR 52.227–20, Rights In Data—SBIR Program. The Contractor may publish, or otherwise disseminate, such data without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. In the event the Contractor has established its claim to copyright data produced under this contract and has affixed a copyright notice and acknowledgement of Government sponsorship, or has affixed the SBIR Rights Notice contained in paragraph (d) of FAR 52.227–20, the Government shall comply with such Notices.

(End of clause)

[68 FR 5232, Feb. 3, 2003, as amended at 70 FR 2022, Jan. 12, 2005; 70 FR 74207, Dec. 15, 2005; 71 FR 71073, Dec. 8, 2006; 81 FR 10520, Mar. 1, 2016]

1852.235–74 Additional Reports of Work—Research and Development.

As prescribed in 1835.070(e), insert a clause substantially the same as the following:

ADDITIONAL REPORTS OF WORK—RESEARCH AND DEVELOPMENT (FEB 2003)

In addition to the final report required under this contract, the Contractor shall submit the following report(s) to the Contracting Officer:

(a) *Monthly progress reports.* The Contractor shall submit separate monthly reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(c) *Submission dates.* Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter

being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within ____ days after the completion of the effort under the contract.

(End of clause)

[68 FR 5232, Feb. 3, 2003]

1852.236–71 Additive or deductive items.

As prescribed in 1836.570(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $8,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–72 Bids with unit prices.

As prescribed in 1836.570(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–73 Hurricane plan.

As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–74 Magnitude of requirement.

As prescribed in 1836.570(d), insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between $_____ and $_____. [Insert the estimated dollar range.]

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–75 Partnering for construction contracts.

As prescribed in 1836.7004, insert the following clause:

PARTNERING FOR CONSTRUCTION CONTRACTS (AUG 1998)

(a) The terms ''partnering'' and ''partnership'' used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[63 FR 44171, Aug. 18, 1998]

1852.237–70 Emergency evacuation procedures.

As prescribed at 1837.110–70(a), insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989; 62 FR 4476, Jan. 30, 1997]

1852.237–71 Pension portability.

As prescribed at 1837.110–70(b), insert the following clause:

PENSION PORTABILITY (JAN 1997)

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed $2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and

if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

[62 FR 4477, Jan. 30, 1997]

1852.237–72 Access to Sensitive Information.

As prescribed in 1837.203–72(a), insert the following clause:

ACCESS TO SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, ''sensitive information'' refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the Contractor agrees to—

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the Contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the Contractor for serious misconduct affecting present responsibility as a government contractor.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information.

(End of clause)

[80 FR 43032, July 21, 2015, as amended at 80 FR 61994, Oct. 15, 2015]

1852.237–73 Release of Sensitive Information.

As prescribed in 1837.203–72(b), insert the following clause:

RELEASE OF SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, ''sensitive information'' refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and

their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237–72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237–72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is ''sensitive.'' This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237–72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the 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)

[80 FR 43032, July 21, 2015, as amended at 80 FR 61994, Oct. 15, 2015]

1852.239–70 Alternate delivery points.

As prescribed in 1839.107–70(a)(1), insert the following clause:

ALTERNATE DELIVERY POINTS (NOV 1993)

(a) The first priority of this contract is to satisfy the anticipated requirements of ____ (identify contracting activity). However, should the actual requirements of ____ (contracting activity) be less than the maximum quantities/values specified in section B of this contract, ____ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List installations and their locations)

(b) The prices of the deliverables in section B are F.O.B. destination to ____ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

Alternate I (NOV 1993). As prescribed in 1839.107–70(a)(2), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[58 FR 59189, Nov. 8, 1993; 58 FR 62556, Nov. 29, 1993, as amended at 62 FR 4477, Jan. 30, 1997; 62 FR 36735, July 9, 1997; 81 FR 24501, Apr. 26, 2016]

1852.241–70 [Reserved]

1852.242–71 Travel outside of the United States.

As prescribed in 1842.7002, insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 56 FR 12460, Mar. 26, 1991]

1852.242–72 Denied Access to NASA Facilities.

As prescribed in 1842.7001, insert the following clause:

DENIED ACCESS TO NASA FACILITIES (OCT 2015)

(a)(1) The performance of this contract requires contractor employees of the prime contractor or any subcontractor, affiliate, partner, joint venture, or team member with which the contractor is associated, including consultants engaged by any of these entities, to have access to, physical entry into, and to the extent authorized, mobility within, a NASA facility.

(2) NASA may close and or deny contractor access to a NASA facility for a portion of a business day or longer due to any one of the following events:

(i) Federal public holidays for federal employees in accordance with 5 U.S.C. 6103.

(ii) Fires, floods, earthquakes, unusually severe weather to include snow storms, tornadoes and hurricanes.

(iii) Occupational safety or health hazards.

(iv) Non-appropriation of funds by Congress.

(v) Any other reason.

(3) In such events, the contractor employees may be denied access to a NASA facility, in part or in whole, to perform work required by the contract. Contractor personnel already present at a NASA facility during such events may be required to leave the facility.

(b) In all instances where contractor employees are denied access or required to vacate a NASA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, which could include continuing on-site performance during the NASA facility closure period. In the absence

of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, that the NASA facility is accessible. Once accessible the contractor shall resume contract performance as required by the contract.

(d) For the period that NASA facilities were not accessible to contractor employees, the contracting officer may—

(1) Adjust the contract performance or delivery schedule for a period equivalent to the period the NASA facility was not accessible;

(2) Forego the work;

(3) Reschedule the work by mutual agreement of the parties; or

(4) Consider properly documented requests for equitable adjustment, claim, or any other remedy pursuant to the terms and conditions of the contract.

(e) Notification procedures of a NASA facility closure, including contractor denial of access, as follows:

(1) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, for announcement of a NASA facility closure to include denial of access to the NASA facility. The contractor shall be responsible for notification of its employees of the NASA facility closure to include denial of access to the NASA facility. The dismissal of NASA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NASA facility closure in which contractor employees are denied access. Moreover, the leave status of NASA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NASA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.

(2) NASA's Emergency Notification System (ENS). ENS is a NASA-wide Emergency Notification and Accountability System that provides NASA the ability to send messages, both Agency-related and/or Center-related, in the event of an emergency or emerging situation at a NASA facility. Notification is provided via multiple communication devices, *e.g.* Email, text, cellular, home/office numbers. The ENS provides the capability to respond to notifications and provide the safety status. Contractor employees may register for these notifications at the ENS Web site: *http://www.hq.nasa.gov/office/ops/nasaonly/ENSinformation.html.*

(End of clause)

[80 FR 52644, Sept. 1, 2015]

1852.242–73 NASA contractor financial management reporting.

As prescribed in 1842.7202, insert the following clause:

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (NOV 2004)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Procedures and Guidelines (NPR) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997, as amended at 65 FR 46628, July 31, 2000; 69 FR 63460, Nov. 2, 2004]

1852.242–78 Emergency Medical Services and Evacuation.

As prescribed in 1842.7003, insert the following clause:

EMERGENCY MEDICAL SERVICES AND EVACUATION—APRIL 2001

The Contractor shall, at its own expense, be responsible for making all arrangements for emergency medical services and evacuation, if required, for its employees while performing work under this contract outside the United States or in remote locations in the United States. If necessary to deal with certain emergencies, the Contractor may request the Government to provide medical or evacuation services. If the Government provides such services, the Contractor shall reimburse the Government for the costs incurred.

(End of clause)

[66 FR 18054, Apr. 5, 2001]

1852.243–70 [Reserved]

1852.243–71 Shared savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS (MAR 1997)

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential purpose of services to be provided under the contract.

(b) Definitions:

(1) *Cost savings,* as contemplated by this clause mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this provision, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this provision, Contractor implementation costs, or ''implementation costs'', shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this provision, the term Government costs means internal costs of NASA, or any other Government agency, which result directly from development and implementation of the CRP. These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the Cost Reduction Proposal.

(c) *General.* The Contractor will develop, prepare and submit CRP's with supporting information as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor shall share in any net cost savings realized from approved and implemented CRPs in accordance with the terms of this clause. The Contractor's actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact performance on its contract, including Government and other Contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) *Computation of cost savings.* The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised

ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) *Supporting information.* As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract, the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submittals.

(f) *Administration.* (1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRP's should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the Contractor may, upon concurrence of the Contracting Officers responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings, and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the

Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in advance of the intended action and affording the Contractor an opportunity for discussion.

(g) *Limitations.* Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

[62 FR 14033, Mar. 25, 1997]

1852.243–72 Equitable adjustments.

As prescribed in 1843.205–70, insert the following clause.

EQUITABLE ADJUSTMENTS (APR 1998)

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the ''Suspension of Work'' clause (FAR 52.242–14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. ''Commission'' is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces	—	—	10
To first tier subcontractor on work performed by its subcontractors	—	—	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	—

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

[63 FR 17339, Apr. 9, 1998, as amended at 81 FR 75345, Oct. 31, 2016]

1852.244–70 Geographic participation in the aerospace program.

As prescribed in 1844.204–70, insert the following clause:

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14034, Mar. 25, 1997]

1852.245–70 Contractor requests for Government-furnished property.

As prescribed in 1845.107–70(a)(1), insert the following clause:

CONTRACTOR REQUESTS FOR GOVERNMENT-FURNISHED PROPERTY (AUG 2015)

(a) The Contractor shall provide all property required for the performance of this contract. The Contractor shall not acquire or construct items of property to which the Government will have title under the provisions of this contract without the Contracting Officer's written authorization. Property which will be acquired as a deliverable end item as material or as a component for incorporation into a deliverable end item is exempt from this requirement. Property approved as part of the contract award or specifically required within the statement of work is exempt from this requirement.

(b)(1) In the event the Contractor is unable to provide the property necessary for performance, and the Contractor requests provision of property by the Government, the Contractor's request shall—

(i) Justify the need for the property;

(ii) Provide the reasons why contractor-owned property cannot be used;

(iii) Describe the property in sufficient detail to enable the Government to screen its inventories for available property or to otherwise acquire property, including applicable manufacturer, model, part, catalog, National Stock Number or other pertinent identifiers;

(iv) Combine requests for quantities of items with identical descriptions and estimated values when the estimated values do not exceed $500,000 per unit; and

(v) Include only a single unit when the acquisition or construction value equals or exceeds $500,000.

(2) Contracting Officer authorization is required for items the Contractor intends to manufacture as well as those it intends to purchase.

(3) The Contractor shall submit requests to the Contracting Officer no less than 30 days in advance of the date the Contractor would, should it receive authorization, acquire or begin fabrication of the item.

(c) The Contractor shall maintain copies of Contracting Officer authorizations, appropriately cross-referenced to the individual property record, within its property management system.

(d) Property furnished from Government excess sources is provided as-is, where-is. The Government makes no warranty regarding its applicability for performance of the contract or its ability to operate. Failure of property obtained from Government excess sources under this clause is insufficient reason for submission of requests for equitable adjustments discussed in the clause at FAR 52.245–1, Government Property, as incorporated in this contract.

(End of clause)

Alternate I (AUG 2015) As prescribed in 1845.107–70(a)(2), add the following paragraph (e).

(e) In the event the Contracting Officer issues written authorization to provide property, the Contractor shall screen Government sources to determine the availability of property from Government inventory or excess property.

(1) The Contractor shall review NASA inventories and other authorized Federal excess sources for availability of items that meet the performance requirements of the requested property.

(i) If the Contractor determines that a suitable item is available from NASA supply inventory, it shall request the item using applicable Center procedures.

(ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer to arrange for transfer of the item from the identified source to the Contractor.

(2) If the Contractor determines that the required property is not available from inventory or excess sources, the Contractor

shall note the acquisition file with a list of sources reviewed and the findings regarding the lack of availability. If the required property is available, but unsuitable for use, the contractor shall document the rationale for rejection of available property. The Contractor shall retain appropriate cross-referenced documentary evidence of the outcome of those screening efforts as part of its property records system.

[76 FR 2006, Jan. 12, 2011, as amended at 80 FR 51959, Aug. 27, 2015; 81 FR 13747, Mar. 15, 2016; 81 FR 14739, Mar. 18, 2016]

1852.245–71 Installation-accountable Government property.

As prescribed in 1845.107–70(b)(1), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY (JAN 2011)

(a) The Government property described in paragraph (c) of this clause may be made available to the Contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property unless authorized by the Contracting Officer under (b)(1)(iv). Under this clause, the Government retains accountability for, and title to, the property, and the Contractor shall comply with the following:

NASA Procedural Requirements (NPR) 4100.1, NASA Materials Inventory Management Manual;

NASA Procedural Requirements (NPR) 4200.1, NASA Equipment Management Procedural Requirements;

NASA Procedural Requirement (NPR) 4300.1, NASA Personal Property Disposal Procedural Requirements;

[Insert any additional property management responsibilities.].

Property not recorded in NASA property systems must be managed in accordance with the requirements of the clause at FAR 52.245–1, as incorporated in this contract.

The Contractor shall establish and adhere to a system of written procedures to assure continued, effective management control and compliance with these user responsibilities. In accordance with FAR 52.245–1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause.

(b)(1) The official accountable record-keeping, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished within NASA management information systems prescribed by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the Contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The Contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area.

(ii) The Contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area.

(iii) The Contractor shall establish a record for Government titled property as required by FAR 52.245–1, as incorporated in this contract, and shall maintain that record until accountability is accepted by the Government.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use requires advance approval of the Contracting Officer and notification of the Industrial Property Officer. The property shall be considered Government furnished and the Contractor shall assume accountability and financial reporting responsibility. The Contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR 52.245–1, Government Property (as incorporated in this contract), until its return to the installation. NASA Procedural Requirements related to property loans shall not apply to offsite use of property by contractors.

(2) After transfer of accountability to the Government, the Contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) of this clause and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the Contracting Officer.

(c) The following property and services are provided if checked:

(1) Office space, work area space, and utilities. Government telephones are available for official purposes only.

(2) Office furniture.

(3) Property listed in [Insert attachment number or ''not applicable'' if no equipment is provided].

(i) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records.

(ii) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government

contract, without the Contracting Officer's prior written approval.

(4) Supplies from stores stock.

(5) Publications and blank forms stocked by the installation.

(6) Safety and fire protection for Contractor personnel and facilities.

(7) Installation service facilities: [Insert the name of the facilities or ''none''].

(8) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(9) Cafeteria privileges for Contractor employees during normal operating hours.

(10) Building maintenance for facilities occupied by Contractor personnel.

(11) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services may be provided on-site, as approved by the Contracting Officer.

(End of clause)

Alternate I (JAN 2011) As prescribed in 1845.107–70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

(i) The Contractor shall not utilize the installation's central receiving facility for receipt of contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a monthly basis, to the SEMO.

[76 FR 2006, Jan. 12, 2011]

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)

[76 FR 2006, Jan. 12, 2011]

1852.245–73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.107–70(d), insert the following clause:

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2017)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Industrial Property Officer and a copy to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31st. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31st.

(2) Some activity may be estimated for the month in which the report is submitted, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533) Contractor Financial Management Report cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(3) In addition to an annual report, if at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of $10 million or more, the contractor shall also submit a report no later than the 21st of each month in accordance with the requirements of paragraph (c)(2) of this clause.

(4) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly report in accordance with (c)(3) of this clause, and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the 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)

[76 FR 2006, Jan. 12, 2011, as amended at 81 FR 24501, Apr. 26, 2016; 81 FR 91047, Dec. 16, 2016]

1852.245–74 Identification and marking of Government equipment.

As prescribed by 1845.107–70(e), insert the following clause.

IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA–HDBK) 6003, Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques, and NASA Standard (NASA–STD) 6002, Applying Data Matrix Identification Symbols on Aerospace Parts or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property: and, (2) contain the data and data format required by the standards. This requirement includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.

(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

(1) Item Description.

(2) Unique Identification Number (License Tag).

(3) Unit Price.

(4) An explanation of the data used to make the unique identification number.

(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

(1) Date originally placed in service.

(2) Item condition.

(e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the NASA center receiving activity listed below:

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–75 Property management changes.

As prescribed in 1845.107–70(f), insert the following clause.

PROPERTY MANAGEMENT CHANGES (JAN 2011)

(a) The Contractor shall submit any changes to standards and practices used for management and control of Government property under this contract to the assigned property administrator prior to making the change whenever the change—

(1) Employs a standard that allows increase in thresholds or changes the timing for reporting loss, damage, or destruction of property;

(2) Alters physical inventory timing or procedures;

(3) Alters recordkeeping practices;

(4) Alters practices for recording the transport or delivery of Government property; or

(5) Alters practices for disposition of Government property.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–76 List of Government property furnished pursuant to FAR 52.245–1.

As prescribed in 1845.107–70(g), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245–1 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment [Insert attachment number or ''not applicable''] of this contract on a no charge-for-use basis pursuant to the clause at FAR 52.245–1, Government Property, as 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)

[76 FR 2006, Jan. 12, 2011]

1852.245–77 List of Government property furnished pursuant to FAR 52.245–2.

As prescribed in 1845.107–70(h), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245–2 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment ____ [Insert attachment number or ''not applicable''] of this contract on a nocharge-for-use basis pursuant to FAR 52.245–2, Government Property Installation Operation Services, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at ____ [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer.

[Insert a description of the item(s), acquisition date, quantity, acquisition cost, and applicable equipment information]

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–78 Physical inventory of capital personal property.

As prescribed in 1845.107–70(i), insert the following clause.

PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (AUG 2015)

(a) In addition to physical inventory requirements under the clause at FAR 52.245–1, Government Property, as incorporated in this contract, the Contractor shall conduct annual physical inventories for individual property items with an acquisition cost exceeding $500,000.

(1) The Contractor shall inventory—

(i) Items of property furnished by the Government;

(ii) Items acquired by the Contractor and titled to the Government under the clause at FAR 52.245–1;

(iii) Items constructed by the Contractor and not included in the deliverable, but titled to the Government under the clause at FAR 52.245–1; and

(iv) Complete but undelivered deliverables.

(2) The Contractor shall use the physical inventory results to validate the property record data, specifically location and use status, and to prepare summary reports of

inventory as described in paragraph (c) of this clause.

(b) Unless specifically authorized in writing by the Property Administrator, the inventory shall be performed and posted by individuals other than those assigned custody of the items, responsibility for maintenance, or responsibility for posting to the property record. The Contractor may request a waiver from this separation of duties requirement from the Property Administrator, when all of the conditions in either (1) or (2) of this paragraph are met.

(1) The Contractor utilizes an electronic system for property identification, such as a laser bar-code reader or radio frequency identification reader, and

(i) The programs or software preclude manual data entry of inventory identification data by the individual performing the inventory; and

(ii) The inventory and property management systems contain sufficient management controls to prevent tampering and assure proper posting of collected inventory data.

(2) The Contractor has limited quantities of property, limited personnel, or limited property systems; and the Contractor provides written confirmation that the Government property exists in the recorded condition and location;

(3) The Contractor shall submit the request to the cognizant property administrator and obtain approval from the property administrator prior to implementation of the practice.

(c) The Contractor shall report the results of the physical inventory to the property administrator within 10 calendar days of completion of the physical inventory. The report shall—

(1) Provide a summary showing number and value of items inventoried; and

(2) Include additional supporting reports of—

(i) Loss in accordance with the clause at 52.245–1, Government Property;

(ii) Idle property available for reuse or disposition; and

(iii) A summary of adjustments made to location, condition, status, or user as a result of the physical inventory reconciliation.

(d) The Contractor shall retain auditable physical inventory records, including records supporting transactions associated with inventory reconciliation. All records shall be subject to Government review and/or audit.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 80 FR 51959, Aug. 27, 2015]

1852.245–79 Records and disposition reports for Government property with potential historic or significant real value.

As prescribed in 1845.107–70(j), insert the following clause.

RECORDS AND DISPOSITION REPORTS FOR GOVERNMENT PROPERTY WITH POTENTIAL HISTORIC OR SIGNIFICANT REAL VALUE (JAN 2011)

(a) In addition to the property record data required by the clause at FAR 52.245–1, Government Property as incorporated in this contract, Contractor records of all Government property under this contract shall—

(1) Identify the projects or missions that used the items;

(2) Specifically identify items of flown property;

(3) When known, associate individual items of property used in space flight operations with the using astronaut(s); and

(4) Identify property used in test activity and, when known, the individuals who 0conducted the test.

(b) The Contractor shall include this information within item descriptions—

(1) On any Standard Form 1428, Inventory Schedule;

(2) In automated disposition systems;

(3) In any other disposition related reports; and

(4) In other requests for disposition instructions.

(c) The Contractor shall not remove NASA identification or markings from Government property prior to or during disposition without the advanced written approval of the Plant Clearance Officer.

(End of clause)

[76 FR 2006, Jan. 12, 2011]

1852.245–80 Government property management information.

As prescribed in 1845.107–70(k)(1), insert the following provision.

GOVERNMENT PROPERTY MANAGEMENT INFORMATION (JAN 2011)

(a) The offeror shall identify the industry leading or voluntary consensus standards, and/or the industry leading practices, that it intends to employ for the management of Government property under any contract awarded from this solicitation.

(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.

[76 FR 2006, Jan. 12, 2011]

1852.245–81 List of available Government property.

As prescribed in 1845.107–70(l), insert the following provision.

LIST OF AVAILABLE GOVERNMENT PROPERTY (JAN 2011)

(a) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–1, Government Property, included in this solicitation. The offeror shall notify the Government, as part of its proposal, of its intention to use or not use the property.

(b) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–2, Government Property Installation Operation Services, as included in this solicitation. The offeror shall notify the Government of its intention to use or not use the property.

(c) The selected Contractor will be responsible for costs associated with transportation, and installation of the property listed in this provision.

(End of provision)

[76 FR 2006, Jan. 12, 2011]

1852.245–82 Occupancy management requirements.

As prescribed in 1845.107–70(m), insert the following clause:

OCCUPANY MANAGEMENT REQUIREMENTS (JAN 2011)

(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 Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any additional Center occupancy requirements here]

(b) The Contractor shall obtain the written approval of the Contracting Officer before installing or removing Contractor-owned property onto or into any Government real property or when movement of Contractor-owned property may damage or destroy Government-owned property. The Contractor shall restore damaged property to its original condition at the Contractor's expense.

(c) The Contractor shall not acquire, construct or install any fixed improvement or structural alterations in Government buildings or other real property without the advance, written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. Title to such property shall vest in the Government.

(d) The Contractor shall report any real property or any portion thereof when it is no longer required for performance under the contract, as directed by the Contracting Officer.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 81 FR 24501, Apr. 26, 2016]

EFFECTIVE DATE NOTE: At 82 FR 38853, Aug. 16, 2017, 1852.245–82 was amended by revising the clause title and date, in paragraph (a)(1), by removing ''NPD 8800.14, Policy for Real Property Management'' and adding ''NPD 8800.14, Policy for Real Estate Management'' in its place, and in paragraph (a)(2), by removing ''NPD 8831.2, Facility Maintenance Management'' and adding ''NPD 8831.2, Facilities Maintenance and Operations Management'' in its place, effective Oct. 16, 2017. For the convenience of the user, the revised text is set forth as follows:

1852.245–82 Occupancy management requirements.

* * * * *

OCCUPANCY MANAGEMENT REQUIREMENTS (SEPTEMBER 15, 2017)

* * * * *

1852.245–83 Real property management requirements.

As prescribed in 1845.107–70(n), insert the following clause:

REAL PROPERTY MANAGEMENT REQUIREMENTS (JAN 2011)

(a) In addition to the requirements of the FAR Government Property Clause incorporated in this contract (FAR 52.245–1), the Contractor shall comply with the following in performance of any maintenance, construction, modification, demolition, or management activities of any Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any real property related Center requirements here]

(b) Within 30 calendar days following award, the Contractor shall provide a plan for maintenance of Government real property provided for use under this contract. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Contracting Officer the need for replacement and/or capital rehabilitation. Upon acceptance by the Contracting Officer, the program shall become a requirement under this contract.

(c) Title to parts replaced by the Contractor in carrying out its normal maintenance obligations shall pass to and vest in the Government upon completion of their installation in the facilities. The Contractor shall keep the property free and clear of all liens and encumbrances.

(d) The Contractor shall keep records of all work done to real property, including plans, drawings, charts, warranties, and manuals. Records shall be complete and current. Record of all transactions shall be auditable. The Government shall have access to these records at all reasonable times, for the purposes of reviewing, inspecting, and evaluating the Contractor's real property management effectiveness. When real property is disposed of under this contract, the Contractor shall deliver the related records to the Government.

(e) The Contracting Officer may direct the Contractor in writing to reduce the work required by the maintenance program authorized in paragraph (b) of this clause at any time.

(End of clause)

[76 FR 2006, Jan. 12, 2011, as amended at 81 FR 24501, Apr. 26, 2016]

1852.246–70 [Reserved]

1852.246–71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Function	Location

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990; 62 FR 14035, Mar. 25, 1997]

1852.246–72 Material inspection and receiving report.

As prescribed in 1846.674, insert the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (APR 2015)

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

(Insert number of copies and distribution instructions.)

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words ''CONTAINS DD FORM 250'' on the package.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 60 FR 40521, Aug. 9, 1995; 62 FR 14035, Mar. 25, 1997; 68 FR 45169, Aug. 1, 2003; 80 FR 12953, Mar. 12, 2015; 81 FR 3339, Jan. 21, 2015]

1852.246–73 Human space flight item.

As prescribed in 1846.370, insert the following clause:

HUMAN SPACE FLIGHT ITEM (MAR 1997)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

''FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER.''

(End of clause)

[62 FR 14035, Mar. 25, 1997, as amended at 81 FR 24501, Apr. 26, 2016]

1852.247–71 Protection of the Florida Manatee.

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (JUL 2015)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee *(Trichechus Manatus)* has been designated an endangered species, and the Indian River Lagoon system within and adjacent to National Aeronautics and Space Administration's (NASA's) Kennedy Space Center (KSC) has been designated as a critical habitat of the Florida Manatee. The KSC Environmental Management Branch will advise all personnel associated with the project of the potential presence of manatees in the work area, and the need to avoid collisions and/or harassment of the manatees. Contractors shall ensure that all employees, subcontractors, and other individuals associated with this contract and who are involved in vessel operations, dockside work, and selected disassembly functions are aware of the civil and criminal penalties for harming, harassing, or killing manatees.

(b) All contractor personnel shall be responsible for complying with all applicable Federal and/or state permits (*e.g.*, Florida Department of Environmental Protection, St. Johns River Water Management District, Fish & Wildlife Service) in performing water-related activities within the contract. Where no Federal and/or state permits are required for said contract, and the contract scope requires activities within waters at KSC, the Contractor shall obtain a KSC Manatee Protection Permit from the Environmental Management Branch. All conditions of Federal, state, and/or KSC regulations and permits for manatee protection shall be binding to the contract. Notification and coordination of all water related activities at KSC will be done through the Environmental Management Branch.

(c) The Contractor shall incorporate the provisions of this clause in applicable subcontracts.

(End of clause)

[80 FR 36723, June 26, 2015]

1852.247–72 Advance notice of shipment.

As prescribed in 1847.305–70(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

____ [Insert number of work days] work days prior to shipping item(s) _____ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to _____ [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.247–73 Bills of Lading.

As prescribed in 1847.305–70(b), insert a clause substantially as follows:

BILLS OF LADING (JUN 2002)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

''I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____''.

(b) *Government Bills of Lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, ''domestic overseas'' means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(i) Item identification/ description.
(ii) Origin and destination.
(iii) Individual and total weights.
(iv) Dimensional Weight.
(v) Dimensions and total cubic footage.
(vi) Total number of pieces.
(vii) Total dollar value.
(viii) Other pertinent data.

(End of clause)

[67 FR 38908, June 6, 2002]

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

[57 FR 40856, Sept. 8, 1992]

1852.301 Solicitation provisions and contract clauses (Matrix).

PART 1853 [RESERVED]