



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 89-72
October 1, 1995

ASSIGNMENT OF COPYRIGHT IN SOFTWARE

PURPOSE. To allow the contracting officer to direct the contractor to claim copyright in computer software and assign the copyright to the Government or another party.

BACKGROUND: NASA published a Final Rule on September 12, 1995 (60 FR 47310-47312), amending the NASA FAR Supplement (NFS) to allow the Contracting Officer to direct the contractor to claim the copyright in computer software and assign the copyright to the Government or another party. Assignment to the Government can only be directed when the contractor has not previously been granted permission to claim copyright on its own behalf.

REGULATION. Sections 1827.404, 1827.405, and 1852.227-14 are revised and 1852.227-15 is added as set forth in the enclosed replacement pages to the NFS.

REPLACEMENT PAGES.- You may use the enclosed pages to replace 27:9, 27:10, 27:1 1, 27:12, 27:13, 27:14, 27:15, TOC 52: 1, TOC 52:2, 52-50.1, 52-50.2, and 52-50.3 (added) of the NFS.

REGULATORY COMPLIANCE.- This PN has been published as a final rule in the Federal Register.

EFFECTIVE DATE. This PN is effective as dated and shall remain in effect until canceled.

HEADQUARTERS CONTACT. Tom Deback, Code HK, (202) 358-0431, or Nina Lawrence, Code GP, (202) 358-2424.

Anne Guenther
Director, Contract Management Division

Enclosures

DISTRIBUTION:

NFSD List

PROCUREMENT NOTICE (89-72) REPLACEMENT **PAGE**

(5) Ensuring that the contractor is timely in reporting reportable items, disclosing subject inventions, and submitting interim reports, subcontract identification, and final reports as required by the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the report of the reportable item. The New Technology Representative shall consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract. All correspondence relating to (1) inventions and waivers under the New Technology clause and (2) election of title under the Patent Rights --- Retention by the Contractor (Short Form) clause shall also be promptly forwarded to the Patent Representative.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the New Technology clause, and notify the contractor. As to any subject invention, the Patent Representative shall (1) ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications, (2) make determinations of inventorship, and (3) ensure the preparation of instruments establishing the Government's rights. The Patent Representative shall also, as necessary, conduct selected reviews of the nature set forth in paragraph (a) of this section to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel-

NASA FAR SUPPLEMENT

27:9

(c) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the New Technology clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the New Technology clause and take corrective action as appropriate. However, no

action may be taken by either the New Technology Representative or the Patent Representative that would (1) constitute a final decision under the Disputes clause, (2) involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245.1, or (3) otherwise be outside the scope of the contract.

(f) If it is determined that a contractor or subcontractor does not clearly understand the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation should be conducted to explain these rights and obligations (see FAR Subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer or a representative may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as

27:10 PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see FAR 4.801(c)(3)).

(g) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence, as specified in paragraph (d) of this section.

1827.375-4 Conveyance of invention rights acquired by the Government.

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227-70, New Technology, a determination of title is to be made in accordance with Section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

(b) When the Government acquires the entire right to, title to, and interest in an invention other than pursuant to paragraph(a) of this section, FAR 27.305-4 shall apply.

1827.375-5 Publication and release of invention disclosures.

FAR 27.305-5 shall apply.

1827.376-6 Licensing of background rights to third parties.

FAR 27.306 shall apply.

Subpart 1827.4--Rights in

Data and Copyrights

1827.404 Basic rights in data clause.

(a) *Alternate definition of limited-rights data.* When the clause at FAR 52.227-14, Rights in Data--General, is used with Alternate I, but without Alternate II or Alternate III, all data qualifying as limited rights data as defined in Alternate I may be withheld from delivery, and any study or report delivered under the contract will contain only unlimited rights data that may be disseminated by NASA. If delivery of withholdable data is required, Alternate II or Alternate III, as applicable, may be used, but any data subject to these alternates will be delivered under the applicable limitedrights or restricted-rights notices and therefore may not be disclosed outside NASA except to the extent permitted by these notices (see FAR 27.404(d) and (e)).

(b) *Protection of limited-rights data specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of limited-rights data and/or the use of Alternate II that may arise (1) from an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Sof tware, or (2) during negotiations.

(c) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of restricted computer sof tware and/or the use of Alternate III that may arise (1) from an off eror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or (2) during negotiations.

(d) *Copyrighted data.*

(1) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to claim copyright subsisting in data, other than computcr sof tware, f irst produced under the contract.

CFR TITLE 48 CHAPTER 18

PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

For copyright of computer software first produced under the contract, see paragraph(e) of this section.

(2) Obtaining a copyright license of a different scope than set forth in subparagraph (c)(1) or (c)(2) of the clause at 52.22714, Rights in Data--General, for any contract or class of contracts in accordance with either FAR 27.404(f)(1)(iv) or FAR 27.404(f)(2)(i), is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) Release, publication, and use of data.

(1) Paragraph (3) (see 1827.409(e) and 1852.227-14) is to be added to paragraph (d) of the clause at FAR 52.227-14, Rights in Data--General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. Paragraph (d)(3)(i) of the clause provides that the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors.

(2) The contracting officer may, in consultation with the installation's Patent or Intellectual Property Counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract

if --

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

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

NASA FAR SUPPLEMENT

27:11

(iii) The concurrence of a cognizant official named in NASA Management Instruction 2210.2 or the Director, Technology Utilization Division, NASA Headquarters, has been obtained.

(3) The contractor's request for permission in accordance with subparagraph (1) of this section may be made either before contract award or during contract performance. Any permission granted in accordance with subdivision (2)(i) or (2)(ii) of this section shall be by express contract provision (or amendment) overriding subparagraph (d)(3) rather than by deleting subparagraph (d)(3) from the clause. Any permission granted in accordance with subdivision (2)(iii) of this section may be either by deleting subparagraph (d)(3) or by special contract provision, as appropriate. Any contract provision relating to any permission granted in accordance with subdivision (2)(i) or (2)(ii) of this section may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor. Also, when any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause (see also FAR 27.404(f)(1)) and without any obligation of confidentiality on the

part of the Government, unless in accordance with subdivision (2)(ii) of this section the contributions of the Contractor may be considered "substantial" for the purposes of FAR

27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR

27.408 may be negotiated for the computer software in question.

(4) If the contractor has not been granted permission to copyright in accordance with paragraphs (c)(1) and (e)(2) of this

27:12 PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

section, paragraph (d)(3)(ii) of the clause at FAR 52.227-14, Rights in Data-General (as modified by 1852.227-14), enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The Contracting Officer may, in consultation with the installation patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements.

(5) In order to insure consistency with copyright law, paragraph (d)(3)(iii) clarifies that the word "establish" in FAR 52.227-14, Rights in Data-General shall be construed as "assert" when used with reference to a claim to copyright.

(f) Unauthorized marking of data. The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data-General.

(g) Omitted or incorrect notices. The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data-General.

1827.405 Other data rights provisions.

(a) Acquisition of existing computer software.

(1) When the clause at FAR 52.227-19, Commercial Computer Software-- Restricted Rights, is used, NASA paragraph (e) (see 1827.409(f)) may be added to receive updates, correction notices, consultation information, and other similar information on any computer software delivered under the purchase order or contract by authorizing the contracting officer or the contract technical representative/user to sign any vendor-supplied agreements, registration forms, or cards and return them directly to

the vendor. This procedure is to facilitate receiving applicable information and is not intended to alter any NASA rights or obligations set forth in the clause or elsewhere in the contract. The price, schedule, and other terms, if any, are to be specified in the purchase order or contract.

(2) When the clause at 52.227-19, Commercial Computer Software--Restricted Rights, is used, NASA paragraph (f) (see 1827.409(g)) may be added to incorporate applicable portions of the contractor's standard commercial license or lease agreement into the purchase order/contract to the extent consistent with the clause, Federal laws, standard industry practices, and the FAR.

(3) Instead of the clause at FAR 52.227-19, Commercial Computer Software--Restricted Rights (either with or without additional paragraphs (e) and/or (f)), the contracting officer may use the clause at 1852.227-86, Commercial Computer Software --- Licensing. This clause is particularly useful when there are multiple computers on which the computer software may be used, but simultaneous use is prohibited or restricted in the vendor/contractor standard commercial software license to be incorporated in and made part of the purchase order/contract. It also automatically adopts terms in the vendor/contractor standard commercial license that may be less restrictive than those set forth in the clause at FAR 52.227-19 without having to customize that clause or modify the purchase order/contract. In addition, it enables the vendor/contractor's standard marking to be used without requiring additional markings on the software.

(b) Contracts awarded under the Small Business Innovative Research (SBIR) Program. If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain delivery of restricted computer software as defined in the clause at FAR 52.227-20, Rights in Data--SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be acquired with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

CFR TITLE 48 CHAPTER 18

PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

(c) Production of special works. Paragraph (f) of the clause at 1852.227-15 is to be added to the clause at FAR 52.227-17, Rights in Data--Special Works, whenever that clause is used in any NASA contract.

1827.406 Acquisition of data.

(a) General. When specifying data delivery requirements in accordance with FAR 27.406(a), requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

(b) Reports of work.

(1) In addition to any other data delivery requirements set forth in the contract in accordance with FAR 27.406, contractors normally should be required to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) and also may be required to furnish them in cost-reimbursement supply contracts if they are considered desirable for monitoring contract performance. This purpose shall be achieved by including the following general requirements, modified as needed

to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(i) Monthly progress reports. The contractor shall submit separate monthly progress reports of 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. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

NASA FAR SUPPLEMENT

27:13

(ii) 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 shall 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 shall be included to convey the intended meaning.

(iii) Final report. The contractor shall submit a final report that documents and summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(iv) Report Documentation Page. The contractor shall include a completed Report Documentation Page (SF 298) as the final page of each report submitted in accordance with subdivisions (i) through (iii) of this section.

(v) Submission. The required numbers of copies of the reports specified in subdivisions (i) through (iii) shall, as defined in the clause at 1852.235-70, be submitted to the contracting officer technical representative (COTR) in the absence of other instructions from the requesting activity. In addition, a reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090-2934.

(2) The contracting officer shall consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the contract. The data delivery requirements section of the contract shall also list other data to be delivered and provide, as necessary, specific instructions regarding delivery, submission dates, report numbering, numbers of copies to be submitted, distribution lists, and any other information to ensure distribution of the reports of work.

27:14 PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

1827.407 Rights to technical data in successful proposals.

NASA may obtain rights in technical data (but not commercial and financial information) contained in a solicited or unsolicited proposal upon which a contract award is based, only by specific agreement with the prospective contractor in accordance with the procedures of FAR 27.407 and the clause at FAR 52.227-23, Rights to Proposal Data (Technical).

1827.408 Cosponsored research and development activities.

The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities in accordance with FAR 27.408.

1827.409 Solicitation provisions and contract clauses.

(a) Alternate I is to be used with the FAR clause at 52.227-14, Rights in Data-General, only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(b) The specific purposes for the release of limited-rights data outside the Government set forth in subdivisions (i) through (v) of FAR 27.404(d)(1) are to be added to the Limited-Rights Notice of subparagraph (g)(2) of Alternate II of the clause at FAR 52.227-14, Rights in Data-General. However, the contracting officer may, upon consultation with the installation's Patent or

Intellectual Property Counsel, make deletions from the specific purposes listed. If all are deleted, the word "None" must be inserted. Additions to those specific purposes listed may be made only with the approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(c) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III of the FAR clause at 52.227-14, Rights in Data-General, in accordance with FAR 27.404(c)(2). Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(d) Use of Alternate IV with the FAR clause at 52.227-14, Rights in Data-General, in any contract other than a contract for basic or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities) is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) In accordance with 1827.404(e)(1), the contracting officer shall add subparagraph (3) set forth in 1852.227-14 to paragraph (d) of the clause at FAR 52.227-14, Rights in Data-General, except in solicitations and contracts for basic or applied research with universities or colleges.

the (f) In accordance with 1827.405(a)(1), contracting officer shall add paragraph (e) set forth in 1852.227-19(a) to the clause

at FAR 52.227-19, Commercial Computer Software--Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

CFR TITLE 48 CHAPTER 18

PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

the (g) In accordance with 1827.405(a)(2), contracting officer shall add paragraph (f) set forth at 1852.227-19(b) to the clause

at FAR 52.227-19, Commercial Computer Software--Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(h) In accordance with 1827.405(a)(3), the contracting officer shall use the clause at 1852.227-86, Commercial Computer Software--Licensing, in lieu of FAR 52.227-19, Commercial Computer Software -- Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

.(i) In accordance with 1827.406(b)(1)(v), the contracting officer shall insert the , clause 1852.235-70, Center for AeroSpace Information (November 1992), in all research and development contracts and in cost-reimbursement supply contracts involving research and development work which require the delivery of reports or data to CASI.

Subpart 1827.6--Foreign License and Technical Assistance Agreements

1827.670 Space Station Freedom technical data.

1827.670-1 Policy.

NASA and its contractors shall comply with the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130 (subchapter M) with respect to the transfer of technical data to any International Space Station Freedom Program multilateral partner. When authorized by the Directive entitled 'Space Station Level I Directive-Subject: Space Station Technology Transfer Control-dated March 21, 1979", certain technical data in support of NASA's International Space Station Freedom Program may be exported to a foreign recipient specified in writing by the contracting officer. Contracting officers, or designees, will assure that any transfer of data to a foreign recipient will be in compliance with the Directive.

NASA FAR SUPPLEMENT

27:15

1827.670-2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 1852.227-87, Transfer of Technical Data Under Space Station International Agreements, in all solicitations, contracts, and purchase orders in support of Space Station Freedom Program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120-130 (subchapter M) in accordance with the 'Space Station Level I Directive--Subject: Space Station Technology Transfer Control--dated March 21, 1979.'

PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

PART 1852

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

TABLE OF CONTENTS

1852.000 Scope of part.

Scope of part.

TOC 52:1

SUBPART 1852.1 INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

1852.101 Using Part 52.

1852.103 Identification of provisions and clauses.

1852.103-70 Identification of modified provisions and clauses.

1852.104 Procedures for modifying and completing provisions and clauses.

SUBPART

1852.203-70

1852.204-75

1852.204-76

1852.204-77

1852.204-78

1852.207-70

1852.208-81

1852.209-70

1852.209-71

1852.209-72

1852.210-70

1852.210-71

1852.210-72

1852.210-75

1852.212-70

1852.212-72

1852.212-73

1852.212-74

1852.214-70

1852.214-71

1852.214-72

1852.215-70

1852.215-71

1852.215-72

1852.215-73

1852.215-74

1852.215-75

1852.215-76

1852.215-77

1852.215-78

1852.2 TEXTS OF PROVISIONS AND CLAUSES

Contracts Between NASA and Former NASA Employees. Security Classification Requirements.

Security Requirements for Unclassified Automated Information Resources.

Submission of Security Plan for Unclassified Federal Computer Systems.

Security Plan for Unclassified Federal Computer Systems. Estimate of Work.

Restrictions on Printing and Duplicating.

Product Removal from Qualified Products List.

Limitation of Future Contracting.

Composition of the Contractor. Brand Name or Equal.

Descriptive Literature for Used Material. Supplies and/or Services to be Furnished. Packaging and Marking.

Notice of Delay.

Partial Shipments.

Delivery Schedule.

Period of Performance.

Caution to Offerors Furnishing Descriptive Literature.

Grouping for Aggregate Award.

Full Quantities.

Increases in Estimated Costs.

Adjustment for Subcontract Price Redetermination.

Restriction on Use and Disclosure of Proposal/Quotation

Information (Data).

Late Submissions, Modifications, and Withdrawals of

Proposals (AO and SBIR Programs).

Alternate Proposals.

Expenses Related to Offeror Submissions. False Statements.

Preproposal/Pre-bid Conference.

Make or Buy Program Requirements.

NASA FAR SUPPLEMENT

TOC 52:2 PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

1852.215-79

1852.215-80

1852.215-81

1852.215-82

1852.215-83

1852.215-84

1852.216-72

1852.216-73

1852.216-74

1852.216-75

1852.216-76

1852.216-77

1852.216-78

1852.216-79

1852.216-80

1852.216-81

1852.216-82

1852.216-83

1852.216-84

1852.216-85

1852.216-86

1852.216-87

1852.216-88

1852.216-89

1852.217-70

1852.219-73

1852.219-74

1852.219-75

1852.219-76

1852.219-77

1852.219-78

1852.219-79

1852.222-70

1852.222-71

1852.223-70

1852.223-71

1852.223-72

1852.223-73

1852.225-71

1852.225-73

1852.227-11

1852.227-14

1852.227-15

1852.227-19

1852.227-70

1852.227-71

1852.227-72

1852.227-84

Price Adjustment for "Make-or-Buy" Changes.

Disposal of Unsuccessful Proposals.

Proposal Page Limitations.

Offeror Oral Presentations.

Alternate Method of Scoring Proposals.

Ombudsman.

Evaluation of Offers Subject to Economic Price Adjustment.

Estimated Cost and Cost Sharing.

Estimated Cost and Fixed Fee.

Payment of Fixed Fee.

Award Fee for Service Contracts.

Award Fee for Non-Service Contracts

Firm Fixed Price.

Level-of-Effort (Fixed-Price).

Task Ordering Procedure.

Estimated Cost.

Level-of -Effort (Cost).

Fixed Price Incentive.

Estimated Cost and Incentive Fee.

Estimated Cost and Award Fee.

Settlement of Letter Contract.

Submission of Vouchers for Payment.

Performance Incentive.

Allowable Cost and Payment.

Property Administration and Reporting.

Small Business and Small Disadvantaged Business

Subcontracting Plan.

Use of Rural Area Small Businesses.

Small Business and Small Disadvantaged Business Subcontracting Reporting.

NASA Small Disadvantaged Business Goal.

NASA Mentor-Protege Program.

Evaluation of Prime Contractor Participation in the NASA Mentor-Protege Program.

Mentor Requirements and Evaluation.

Facilities Nondiscrimination Notice.

Facilities Nondiscrimination.

Safety and Health.

Frequency Authorization.

Potentially Hazardous Items.

Safety and Health Plan.

Nondomestic Construction Materials.

Duty-Free Entry Supplies.

Patent Rights--Retention by the Contractor (Short Form).

Rights in Data--General.

Rights in Data--Special Works.

Commercial Computer Software--Restricted Rights.

New Technology.

Requests for Waiver of Rights to Inventions.

Designation of New Technology Representative and Patent Representative.

Patent Rights Clauses.

CFR TITLE 48 CHAPTER 18

*PROCUREMENT NOTICE (89-72) **REPLACEMENT PAGE***

1852.227-11 Patent Rights--Retention by the Contractor (Short Form).

As prescribed at 1827.373(a), modify the clause at FAR 52.227-11 by adding the following subparagraph (5) to paragraph (f) of the basic clause. In addition, use the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(5) The contractor shall provide the contracting officer the following:

(i) A listing every 12 months (or such longer period as the contracting officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none. (iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

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

(End of addition)

(2) The contractor shall include the clause in the NASA FAR Supplement at 1827.227-70, New Technology, 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.

(End of substitution)

1852.227-14 Rights In Data--General.

As prescribed in 1827.409(e), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227-14:

(3)(i) The Contractor agrees not to establish claim to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

NASA FAR SUPPLEMENT

52-50.1

(ii) 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)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word 'establish' is used in this clause, with reference to a claim to copyright, it shall be construed to mean 'assert'

(End of addition)

1852.227-15 Rights In Data--Special Works

As prescribed in 1827.405(c), 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)

1852.227-19 Commercial Computer Software--Restricted Rights.

(a) As prescribed in 1827.409(f), 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)

52-50.2 PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

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

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

(End of addition)

1852.227-70 New Technology.

As prescribed in 1827.373(b), insert the following clause:

NEW TECHNOLOGY (JULY 1995)(a) Definitions

'Administrator.' as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

'Contract' as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

'Made,' as used in this clause, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

'Nonprofit organization,' as used in this clause, 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,' as used in this clause, 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 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.' as used in this clause, means any invention, discovery, improvement, or innovation of the Contractor, whether or not the same is or

may be patentable or otherwise protectible under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

'small business firm,' as used in this clause, 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 size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

'Subject invention.' as used in this clause, 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.).

(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) or (2) of Section 305(a) of the National Aeronau-

CFR TITLE 48 CHAPTER 18

PROCUREMENT NOTICE (89-72) REPLACEMENT PAGE

tics and Space Act of 1958 2457(a)) (hereinafter called and the above presumption

(42 U.S.C.'the Act' shall be NASA FAR SUPPLEMENT

(The next page is 52-51.)

52-50.3