



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 89-86
October 29, 1996

NASA FAR SUPPLEMENT (NFS)REWRITE

(PARTS 1828 THROUGH 1833 and 1852)

PURPOSE: To rewrite the NFS to: (1) delete unnecessary policy; (2) clarify valid policy; (3) revise obsolete policy; (4) delegate authority to the appropriate level; and (5) conform text numbering to that of the FAR.

BACKGROUND: The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and issued through PNs. Upon completion of all parts, the NFS will be reissued in a new edition.

REGULATION: Parts 1828 through 1833 are revised in their entirety as set forth in the enclosed replacement pages. Part 1852 is revised as a result of the rewritten parts.

REPLACEMENT PAGES: You may use the enclosed pages to replace Structure page 5, Structure page 6, Part 1828, Part 1829, Part 1830, Part 1831, Part 1832, Part 1833, TOC 52:3, TOC 52:4, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5258, 5269, 5270, 5271, 5272, 5274, 5275, 5276, 52111, and 52112 of the NFS. Remove pages 5276.1, 5276.2, 5277, 5278, 5279, 5280, 5281, 5282, 52115, and 52116 of the NFS..

REGULATORY COMPLIANCE: This PN has been published as a final rule in the Federal Register (61 FR 55765 55774, October 29, 1996).

EFFECTIVE DATE: This PN is effective as dated and shall remain in effect until canceled or superseded.

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DISTRIBUTION:

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PART 1828

BONDS AND INSURANCE

Subpart 1828.1--Bonds

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed \$100,000 and a performance bond or a performance and payment bond is required (see FAR 28.102 and 28.103). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed \$3 million.

1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.

1828.103-70 Subcontractors performing construction work under nonconstruction contracts.

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction work is in excess of \$100,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102-1(b)(1) when the subcontract construction work is greater than \$25,000 but not greater than \$100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102-2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

1828.103-71 Solicitation requirements and contract clauses.

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in FAR 28.102-3. When alternative payment protections are required, insert a clause substantially the same as FAR 52.228-13, Alternative Payment Protections, appropriately modified.

1828.106 Administration.

1828.106-6 Furnishing information.

(c) The contracting officer is the agency head's designee.

Subpart 1828.2--Sureties

1828.202 Acceptability of corporate sureties.

(d) Contracting officers may obtain access to Department of Treasury Circular 570 through the internet at <http://www.ustreas.gov/treasury/bureaus/finman/c570.html>.

1828.203 Acceptability of individual sureties.

(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1828.3--Insurance

1828.307 Insurance under cost-reimbursement contracts.

1828.307-1 Group insurance plans.

(a) The procurement officer is the approval authority.

1828.307-2 Liability.

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(b) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Associate Administrator for Procurement (Code HS) is the approval authority.

1828.307-70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the contracting officer, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307-2.

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

1828.311-1 Contract clause.

The contracting officer shall insert the clause at FAR 52.228-7, Insurance-Liability to Third Persons, as prescribed in FAR 28.311-1 unless waived by the procurement officer.

1828.311-2 Agency solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification,

maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

1828.370 Fixed-price contract clauses.

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

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

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities, NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of \$100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of that clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of \$100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate its application to that particular launch.

(d) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of \$100,000 or more when the work is to be performed involves "Protected Space Operations" (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extensions, to existing contracts under \$100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

1828.372 Clause for minimum insurance coverage.

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

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PART 1829

TAXES

Subpart 1829.1--General

1829.101 Resolving tax problems.

(a)(i) The Headquarters Office of the General Counsel (Code G) is the designated legal counsel for all external contacts on FAR part 29 tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

(ii) Tax problems that cannot be solved readily by reference to FAR Part 29 shall be forwarded to Code G through the installation's Office of Chief Counsel. The following material, as applicable, shall be forwarded to Code G with a copy to the Associate Administrator for Procurement (Code HS):

(A) A comprehensive statement of pertinent facts, including documents and correspondence.

(B) A copy of the contract.

(C) A thorough review of the legal issues involved and recommended action.

(D) If appropriate, a statement of the problem's effects on procurement policies and procedures, with recommendations.

SUBPART 1829.2--Federal Excise Taxes

1829.203 Other Federal tax exemptions.

1829.203-70 NASA Federal tax exemptions.

(a) The Associate Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Headquarters Office of Procurement (Code HS).

(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) The contracting officer shall post a copy of the permit for inspection.

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PART 1830

COST ACCOUNTING STANDARDS

Subpart 1830.2-- CAS Program Requirements

1830.201-5 Waiver.

The procurement officer shall forward all requests for waiver of CAS requirements to the Associate Administrator for Procurement (Code HC).

Subpart 1830.70--Facilities Capital Employed for Facilities in Use and for Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Contract facilities capital estimates.

To estimate facilities capital cost of money (FCCOM), the contracting officer shall use DD Form 1861, Contract Facilities Capital Cost of Money, after evaluating the contractor's cost proposal, establishing cost of money factors, and developing a prenegotiation cost objective.

1830.7001-2 DD Form 1861 completion instructions.

(a) List overhead pools and direct-charging services centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective, and list them against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to compute the FCCOM estimated to be incurred each year. The sum of these products represents the estimated contract FCCOM for that year's effort.

(d) Add the yearly estimates to calculate the total contract FCCOM.

1830.7001-3 Preaward FCCOM applications.

Apply FCCOM in establishing cost and price objectives as follows:

(a) **Cost objective.** Use the FCCOM with normal, booked costs in establishing a cost objective or the target cost of an incentive type contract. Do not subsequently adjust these target costs when actual cost of money rates become available during the contract performance period.

(b) **Profit/fee objective.** Do not include FCCOM in the cost base when establishing a prenegotiation profit/fee objective. Use only normal, booked costs in this cost base.

1830.7001-4 Postaward FCCOM applications.

(a) Interim billings based on costs incurred.

(1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These FCCOM calculations are interim estimates subject to adjustment.

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

(b) Final settlements.

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

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Definitions.

(a) "Cost of money rate" is either--

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

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

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

1830.7002-2 Cost of money calculations.

(a) The interest rate referenced in 1830.7002-1(a)(1) is established semi-annually and published in the Federal Register during the fourth week of December and June.

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

1830.7002-3 Representative investment calculations.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

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

(1) Determine a representative investment for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

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

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

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

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

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

1830.7002-4 Determining imputed cost of money.

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

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

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

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

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

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PART 1831

CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2--Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205-18 Independent research and development and bid and proposal costs.

(e) A class deviation exists to permit costs contributed by a contractor under a cooperative arrangement with NASA to be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement. This deviation does not apply to costs contributed by the contractor under cost-sharing contracts described in FAR 16.303 and 1816.303.

1831.205-32 Precontract costs.

(1) Precontract costs are applicable only to sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts.

(2) The procurement officer is the approval authority for the use of precontract costs. Authorization shall be in writing and shall address the following:

(i) the necessity for the contractor to initiate work prior to contract award;

(ii) the start date of such contractor effort;

(iii) the total estimated time of the advanced effort; and

(iv) the cost limitation.

(3) Authorization to incur precontract costs shall be provided to the contractor in writing and shall include the following:

(i) the start date for incurrence of such costs;

(ii) the limitation on the total amount of precontract costs which may be incurred;

(iii) a statement that the costs are allowable only to the extent they would have been if incurred after formal contract award; and

(iv) a statement that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

1831.205-70 Contract clause.

The contracting officer shall insert the clause at 1852.231-70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205-32.

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PART 1832

CONTRACT FINANCING

1832.006-2 Definitions.

The Associate Administrator for Procurement is the Agency remedy coordination official.

Subpart 1832.1--Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.

1832.111-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232-79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

Subpart 1832.2--Commercial Item Purchase Financing

1832.202-1 Policy.

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts. (see 1832.402).

1832.206 Solicitation provisions and contract clauses.

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

Subpart 1832.4--Advance Payments for Non-Commercial Items

1832.402 General.

(e)(1) The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is \$25,000,000 or less, and for all increases to such contracts over \$25,000,000 previously approved by Code HC as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed, effective through September 30, 2000 (for SBIRs) and September 30, 1996 (for STTRs), authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HC).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

1832.406 Letters of credit.

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

1832.407 Interest.

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.

1832.409-1 Recommendation for approval.

1832.409-170 NASA procedure for approval.

In addition to the items listed in FAR 32.409-1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

(a) Name of the cognizant NASA Headquarters program or staff office;

(b) Name and phone number of the contracting officer or negotiator;

(c) A copy of the proposed advance payments clause;

(d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see Subpart 1815.9);

(5) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

1832.410 Findings, determination, and authorization.

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase "Advance payments (in an amount not to exceed \$..... at any time outstanding)" in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account if no special bank account is required.

(iii) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use "is in the public interest."

(v) in format paragraph (c), use the phrase "(the amount at any time outstanding)" in all determinations and findings.

1832.412 Contract clause.

(a) When the clause at FAR 52.232-12, Advance Payments, is used, make the following modifications:

(i) In the "Maximum Payment" paragraph (either paragraph (d) or (e)), 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...".

(ii) In paragraph (m)(1) delete "in the form prescribed by the administering office" and substitute "on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation".

(iii) Annotate the clause "as modified by NASA (October 1996)".

(e) See 1832.412(f).

(f) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs. Annotate the clause "as modified by NASA (October 1996)", delete paragraph (a) of Alternate V, 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.

Subpart 1832.5--Progress Payments Based on Costs

1832.501 General.

1832.501-1 Customary progress payment rates.

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

1832.501-2 Unusual progress payments.

The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for the use of unusual progress payments.

1832.502 Preaward matters.

1832.502-2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for the actions in 32.502-2, except the Associate Administrator for Procurement (Code HC) is the approval authority for any deviations addressed in FAR 32.502-2(b).

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and

contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

1832.504 Subcontracts.

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

Subpart 1832.7--Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in subparagraph (a)(3) of this subsection applies):

(1) The total value of the contract (including options as defined in FAR Subpart 17.2) is \$1,000,000 or more.

(2) The period of performance under the contract overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at award.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions in 1832.702-70(a)(1)-(3) are met and the initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702-70(a)-(c). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(e) A class deviation from the conditions set forth in paragraphs 1832.702-70(a)-(c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program (through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30,

1996). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

1832.704 Limitation of cost or funds.

1832.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is --

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

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

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

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

Subpart 1832.9--Prompt Payment

1832.903 Policy.

Invoice and contractor financing payments for contracts (other than Fixed-Price Architect-Engineer Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates. (See 1832.970).

1832.906 Contract financing payments.

(a) Except as authorized in 1832.903, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However, the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the Federal Register (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

1832.908 Contract clauses.

(c) When the clause at FAR 52.232-25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.903, make the following modifications:

(i) Insert "17" in lieu of "30" in paragraphs (a)(2)(i) and (a)(2)(ii); and

(ii) Insert "17th" in paragraph (b)(2).

(iii) Annotate the clause "as modified by NASA (October 1996)".

(d) When a clause at FAR 52.232-25, 52.232-26 or 52.232-27 is used, the clause at 52.232-28 shall be used, modified as follows:

(i) Delete the words "and contract number" from paragraph (d).

(ii) Insert the following language in lieu of paragraph (b)(4):

"The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA."

(iii) Annotate the clause "as modified by NASA (October 1996)".

1832.970 Payments to Canadian Commercial Corporation.

As authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of the "the 30th day" at FAR 32.905(a)(1), 32.905(a)(2) and 32.906(a).

Subpart 1832.10--Performance-Based Payments

1832.1004 Procedure.

(b)(2) In determining the amount of performance-based payments, contracting officers shall ensure that the payments will not result in an unreasonably low or negative level of contractor investment. To make this assessment, contracting officers shall request the contractor to submit with its proposal a numeric and graphic funding profile showing the cash flow and contractor investment in the contract.

1832.1005 Contract clauses.

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

1832.1006 Agency approvals.

Performance-based payments shall be approved in accordance with field installation procedures.

1832.1009 Title.

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

PART 1833

PROTESTS, DISPUTES, AND APPEALS

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PART 1833

PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1--Protests

1833.103 Protests to the agency.

(b)(1) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual dispositions.

1833.104 Protests to GAO.

The Associate Administrator for Procurement is the sole authority for deciding whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part and other guidance provided by NASA Headquarters.

(a)(2) The Headquarters Office of Procurement (Code HS) shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to Code HS, the Headquarters Office of the General Counsel (Code GK), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to Code GK within 20 days after GAO notification of protest receipt. Also

include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except (a) and (b) are not required if already accomplished:

(a) Send a copy of the protest file index to Code GK within 10 days of receipt of the request.

(b) Send a copy of the protest file to Code GK within 15 days of receipt of the request.

(c) With Code GK concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iii) Code GK shall submit the protest file to GAO.

(4)(i) Code GK shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) The Associate Administrator for Procurement (Code HS) is the approval authority for contract award.

(c)(1) The contracting officer shall consult Code HS before terminating a protested contract.

(2) See 1833.104(b)(1).

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to Code GK within 6 days of issuance of the GAO decision.

1833.106 Solicitation provision and contract clause.

(a) The contracting officer shall be the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233-2.

Subpart 1833.2--Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Headquarters Offices of Inspector General (Code W) and the General Counsel (Code G).

1833.211 Contracting officer's decision.

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing appeals of contracting officer final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208), and include a notification that the Board's operating procedures appear in Part 48, Code of Federal Regulations, Chapter 2, Appendix A.

1833.215 Contract clause.

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

1852.228-70 Aircraft Ground and Flight Risk.

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK

(OCTOBER 1996)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes--

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "***In the open***" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) "***Flight***" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

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

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "**Contractor's premises**" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "**Operation**" means operations and tests, other than on

any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

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

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

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

(2) Upon receipt of this notice, the Contractor shall act

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

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

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

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

is reinstated in accordance with paragraph (c)(5) of this clause.

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

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

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

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

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

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

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

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

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

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

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

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

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a

subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

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

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

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

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

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

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

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be

made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either (i) require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on

the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the

Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

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

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

(End of clause)

1852.228-71 Aircraft Flight Risks.

As prescribed in 1828.311-270, insert the following clause:

AIRCRAFT FLIGHT RISKS

(DECEMBER 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost- Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance--Liability to Third Persons clause), the Contractor shall not (1) be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause--

(1) Unless otherwise specifically provided in the Schedule, "*aircraft*" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this

contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "**Flight**" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to sea-planes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

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

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

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

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

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

1852.228-72 Cross-Waiver of Liability for Space Shuttle Services.

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

**CROSS-WAIVER OF LIABILITY
FOR SPACE SHUTTLE SERVICES**

(SEPTEMBER 1993)

(a) As prescribed by regulation (14 CFR Part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to Contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

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

(1) "**Contractors**" and "**Subcontractors**" include suppliers of any kind.

(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) "**Party**" means a person or entity that signs an agreement involving a Space Shuttle service;

(4) "**Payload**" means all property to be flown or used on or in the Space Shuttle; and

(5) "**Protected Space Operations**" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

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

(6) "**Related entity**" means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c)(1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This 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. This waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

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

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 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 waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

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

(End of clause)

1852.228-73 Bid Bond.

As prescribed in 1828.101-70, insert the following provision:

BID BOND

(OCTOBER 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.228-1, in the amount of twenty percent (20%) of the bid price, or \$3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228-75 Minimum Insurance Coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE

(OCTOBER 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 Space Station Activities.

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

CROSS-WAIVER OF LIABILITY FOR

SPACE STATION ACTIVITIES

(DECEMBER 1994)

(a) The Intergovernmental Agreement for the Space Station contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this clause is to extend this cross-waiver requirement to Contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

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

(1) "**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.

(2) "**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.

(3) "**Partner State**" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA) and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) "**Payload**" means all property to be flown or used on or in a launch vehicle or the Space Station.

(5) "**Protected Space Operations**" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this contract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;

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

(6) "**Related entity**" means:

(i) A Partner State's Contractors or subcontractors at any tier;

(ii) A Partner State's users or customers at any tier; or

(iii) A Contractor or subcontractor of a Partner State's user or customer at any tier.

(7) "**Contractors**" and "**Subcontractors**" include suppliers of any kind.

(c)(1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This 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, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(i) Any Partner State other than the United States;

(ii) A related entity of any Partner State other than the United States; and

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

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved 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 United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

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

(End of clause)

1852.228-78 Cross-Waiver of Liability for NASA Expendable Launch Vehicle Launches.

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

CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE

LAUNCH VEHICLE (ELV) LAUNCHES

(SEPTEMBER 1993)

(a) As prescribed by regulation (14 CFR Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration,

use, and investment. The purpose of this clause is to extend this cross-waiver requirement to Contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

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

(1) "**Contractors**" and "**Subcontractors**" include suppliers of any kind.

(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) "**Party**" means a person or entity that signs an agreement involving an ELV launch;

(4) "**Payload**" means all property to be flown or used on or in the ELV; and

(5) "**Protected Space Operations**" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

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

(6) "**Related entity**" means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c)(1)The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This 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, including but

not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

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

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved 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 any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(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 the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

(End of clause)

1852.231-70 Precontract Costs.

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

PRECONTRACT COSTS

(JUNE 1995)

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

(End of clause)

1852.232-77 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)

(MARCH 1989)

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

SCHEDULE FOR ALLOTMENT OF FUNDS

Date Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this

contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

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

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

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

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

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

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

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

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

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

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

(End of clause)

1852.232-79 Payment for On-Site Preparatory Costs

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

PAYMENT FOR ON-SITE PREPARATORY COSTS

(SEPTEMBER 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)

1852.232-81 Contract Funding.

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

CONTRACT FUNDING

(JUNE 1990)

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

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

(End of clause)

1852.232-82 Submission of Requests for Progress Payments.

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

**SUBMISSION OF REQUESTS FOR
PROGRESS PAYMENTS**

(MARCH 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)

1852.234-70 Phased Procurement Using Down-Selection Procedures.

As prescribed in 1834.005-170(a), insert the following clause in solicitations and contracts for phased procurements using down-selection procedures other than the progressive competition technique. Phase identifications should be modified as appropriate:

**PHASED PROCUREMENT USING
DOWN-SELECTION PROCEDURES**

(NOVEMBER 1993)

(a) This solicitation is for the acquisition of _____ [Insert Program title]. This system is a major system as defined by Office of Management and Budget (OMB) Circular A-109 and NASA Management Instruction (NMI) 7120.4. 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

B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the _____ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will _____ [insert general Phase C/D goals].

(c) The competition for Phase C/D will be based on the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

(d) NASA will issue a separate, formal solicitation for Phase C/D, and all information required for preparation of Phase C/D proposals, including the final evaluation factors, will be provided at that time.

(e) Phase C/D will be synopsisized in the Commerce Business Daily (CBD) 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 B contractors will be capable of successfully competing for Phase C/D, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase C/D synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____ (Insert the specific Phase B 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 C/D 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 C/D proposals are solicited.

[Insert draft Phase C/D evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B

contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B 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 B award -

Phase C/D synopsis -

Phase C/D proposal requested -

Phase C/D proposal receipt -

Phase C/D award -

(End of clause)

1852.234-71 Phased Procurement Using Progressive Competition Down-Selection Procedures.

As prescribed in 1834.005-170(b), insert the following clause in solicitations and contracts for phased procurements using progressive competition down-selection procedures. Phase identifications should be modified as appropriate:

PHASED PROCUREMENT USING PROGRESSIVE COMPETITION

DOWN-SELECTION PROCEDURES

(NOVEMBER 1993)

(a) This solicitation is for the acquisition of _____ [Insert Program title]. This system is a major system as defined by Office of Management and Budget (OMB) Circular A-109 and NASA Management Instruction (NMI) 7120.4. 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 B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive

down-selection.

(b) Phase B is for the _____ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will _____ [insert general Phase C/D goals].

(c) The competition for Phase C/D will be based on the results of Phase B, and the award criteria for Phase C/D will include successful completion of Phase B requirements.

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

(e) Phase C/D will be synopsisized in the Commerce Business Daily (CBD) 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 B contractors will be capable of successfully competing for Phase C/D, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase C/D synopsis, and NASA will provide that source to all the material furnished to the Phase B contractors that is necessary to submit a proposal.

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____ (Insert the specific Phase B 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 C/D 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 C/D proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase C/D.

[Insert draft Phase C/D evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B 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 B award -

Phase C/D synopsis -

Phase C/D proposal requested -

Phase C/D proposal receipt -

Phase C/D award -

(End of clause)

1852.235-70 Center for AeroSpace Information.

As prescribed in 1827.409(i) and 18 35.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION

(NOVEMBER 1992)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(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) When the contract otherwise requires the submission of monthly progress, quarterly progress, or final reports, as defined at 1827.406(b), the last page of such reports shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to:

Center for AeroSpace Information (CASI)

Attn: Accessioning Department

800 Elkridge Landing Road

Linthicum Heights, MD 21090-2934

(End of clause)

1852.235-71 Key Personnel and Facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES

(MARCH 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 Plan for New Technology Reporting.

As prescribed in 1835.070(c), insert the following provision:

PLAN FOR NEW TECHNOLOGY REPORTING

(MARCH 1989)

The Offeror shall, in the proposal in response to this solicitation, provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.227-70, New Technology, which is to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval before contract execution a detailed plan setting forth

the manner in which the Offeror will meet the new technology reporting requirements of the New Technology clause. This plan shall, at a minimum--

- (a) Identify the specific areas of technical effort that are considered likely to generate new technology;
- (b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details, and benefits of new technology reporting;
- (c) Describe the procedures to be established, maintained, and followed for reviewing the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;
- (d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;
- (e) Describe the procedures for (1) selecting either NASA's New Technology clause or another patent rights clause for inclusion in subcontracts having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and
- (f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

1852.236-71 Additive or Deductive Items.

As prescribed in 1836.370(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS

(MARCH 1989)

- (a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of \$100,000, a bidder's base bid of \$85,000, and four successive additives of \$10,000, \$8,000, \$6,000, and \$4,000. In this example, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed \$100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

1852.236-72 Bids with Unit Prices.

As prescribed in 1836.370(b), insert the following provision:

BIDS WITH UNIT PRICES

(MARCH 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

1852.236-73 Hurricane Plan.

As prescribed in 1836.570-1, insert the following clause:

HURRICANE PLAN

(DECEMBER 1988)

In the event of a hurricane warning, the Contractor shall--

- (a) Inspect the area and place all materials possible in a protected location;
- (b) Tie down, or identify and store, all outside equipment and materials;
- (c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and
- (d) Ensure that temporary erosion controls are adequate.

(End of clause)

1852.236-74 Magnitude of Requirement.

As prescribed in 1836.570-2, insert the following provision:

MAGNITUDE OF REQUIREMENT

(DECEMBER 1988)

The Government estimated price range of this project is between \$_ and \$_. [Insert the estimated dollar range.]

(End of provision)

1852.237-70 Emergency Evacuation Procedures.

As prescribed at 1837.110-70, insert the following clause:

EMERGENCY EVACUATION PROCEDURES

(DECEMBER 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

1852.237-71 Pension Portability.

As prescribed at 1837.110(a), insert the following clause:

PENSION PORTABILITY

(NOVEMBER 1994)

(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 all subcontracts for continuing services under a service contract where (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) the conditions at 1837.170 are satisfied.

(End of clause)

1852.237-72 Identification of Uncompensated Overtime.

As prescribe in 48 CFR 1837.110(b), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME

(APRIL 1995)

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) subpart 22.11).

(a) Definitions. As used in this provision:

"Uncompensated overtime" means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

"Effective hourly rate" is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20.00 per hour would be converted to an effective hourly rate of \$17.78 per hour [(\$20.00 x 40) divided by 45 = \$17.78.]

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

1852.239-70 Alternate Delivery Points.

As prescribed in 1839.7008(a), insert the following clause:

ALTERNATE DELIVERY POINTS

(NOVEMBER 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

(NOVEMBER 1993)

As prescribed in 18-39.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in Section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

1852.241-70 Renewal of Contract.

As prescribed in 1841.501(b), insert the following clause:

RENEWAL OF CONTRACT

(DECEMBER 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed years.

(End of clause)