



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-16
August 18, 1998

PARTNERING FOR CONSTRUCTION CONTRACTS

PURPOSE: To set forth a clause to be used to promote partnering under construction contracts when it is determined that the benefits to be derived exceed the costs.

BACKGROUND: Several of the centers have used clauses promoting the use of partnering for construction contracts. It was considered beneficial to have a standard Agency-wide clause which would establish the Agency policy to endorse the use of partnering where it is determined to be cost effective and its use is voluntarily agreed to by the parties. The use of partnering in NASA and other agency construction contracts has been demonstrated to reduce the average cost and schedule growth, as well as reduce the amount of contract claims and litigation. These results have been achieved because partnering has promoted a relationship of open communication and close cooperation between the contractor and the Government, creating a mutually beneficial environment within which to achieve contract objectives and resolve issues.

REGULATION: Parts 1836 and 1852 are amended as set forth in the enclosed replacement pages to the NFS.

REPLACEMENT PAGES: You may use the enclosed pages to replace Structure page 5, Structure page 6, Part 1836, 52:3, 52:4, 52:67, 52:68, 52:69, 52-95, 52-96, 52-97, and 52-98 to the NFS.

REGULATORY COMPLIANCE: This PN was published as a final rule in the Federal Register (63 FR 44170 - 44171, August 18, 1998).

EFFECTIVE DATE: This PN is effective as dated and shall remain in effect until canceled or superseded.

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1825.3 Balance of Payments Program

1825.4 Trade Agreements

1825.6 Customs and Duties

1825.9 Additional Foreign Acquisition Clauses

1825.70 Foreign Contracts

PART 1826 RESERVED

SUBCHAPTER E--GENERAL CONTRACTING REQUIREMENTS

PART 1827 PATENTS, DATA, AND COPYRIGHTS

1827.3 Patent Rights Under Government Contracts

1827.4 Rights in Data and Copyrights

1827.6 Foreign License and Technical Assistance Agreements

PART 1828 BONDS AND INSURANCE

1828.1 Bonds

1828.2 Sureties

1828.3 Insurance

PART 1829 TAXES

1829.1 General

1829.2 Federal Excise Taxes

PART 1830 COST ACCOUNTING STANDARDS

1830.2 CAS Program Requirements

1830.70 Facilities Capital Employed for Facilities in Use or for
Facilities Under Construction

PART 1831 CONTRACT COST PRINCIPLES AND PROCEDURES

1831.2 Contracts with Commercial Organizations

PART 1832 CONTRACT FINANCING

1832.1 Non-Commercial Item Purchase Financing

1832.2 Commercial Item Purchase Financing

1832.4 Advance Payments for Non-Commercial Items

1832.5 Progress Payments Based on Costs

1832.7 Contract Funding

1832.9 Prompt Payment

1832.10 Performance-Based Payments

PART 1833 PROTESTS, DISPUTES, AND APPEALS

1833.1 Protests

1833.2 Disputes and Appeals

SUBCHAPTER F--SPECIAL CATEGORIES OF CONTRACTING

PART 1834 MAJOR SYSTEM ACQUISITION

1834.0 General

1834.70 Acquisition of Major Systems

PART 1835 RESEARCH AND DEVELOPMENT CONTRACTING

PART 1836 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.2 Special Aspects of Contracting for Construction

1836.5 Contract Clauses

1836.6 Architect-Engineer Services

1836.7 Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.70 Partnering

PART 1837 SERVICE CONTRACTING

1837.1 Service Contracts--General

1837.2 Advisory and Assistance Services

1837.70 Acquisition of Training

PART 1838 RESERVED

PART 1839 ACQUISITION OF INFORMATION TECHNOLOGY

1839.1 General

PART 1840 RESERVED

PART 1841 ACQUISITION OF UTILITY SERVICES

1841.2 Acquiring Utility Services

1841.3 Requests for Assistance

1841.4 Administration

1841.5 Solicitation Provision and Contract Clauses

SUBCHAPTER G--CONTRACT MANAGEMENT

PART 1842 CONTRACT ADMINISTRATION

1842.1 Interagency Contract Administration and Audit Services

1842.2 Assignment of Contract Administration

1842.5 Postaward Orientation

1842.7 Indirect Cost Rates

1842.8 Disallowance of Costs

PART 1836
CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

TABLE OF CONTENTS

**SUBPART 1836.2 SPECIAL ASPECTS OF CONTRACTING FOR
CONSTRUCTION**

1836.203 Government estimate of construction costs.

1836.209 Construction contracts with architect-engineer firms.

1836.213 Special procedures for sealed bidding in construction contracting.

1836.213-3 Invitations for bids.

1836.213-70 Additive and deductive items.

1836.213-4 Notice of Award.

SUBPART 1836.5 CONTRACT CLAUSES

1836.570 NASA solicitation provisions and contract clause.

SUBPART 1836.6 ARCHITECT-ENGINEER SERVICES

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

1836.602-2 Evaluation boards.

1836.602-4 Selection authority.

1836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

1836.602-70 Selection of architect-engineers for master planning.

1836.603 Collecting data on and appraising firms' qualifications.

1836.605 Government cost estimate for architect-engineer work.

SUBPART 1836.7 STANDARD AND OPTIONAL FORMS FOR CONTRACTING FOR CONSTRUCTION, ARCHITECT-ENGINEER SERVICES, AND DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS

1836.702 Forms for use in contracting for architect-engineer services.

SUBPART 1836.70 PARTNERING

1836.7001 Definition.

1836.7002 General.

1836.7003 Policy.

1836.7004 NASA solicitation provision and contract clause.

PART 1836 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS Subpart 1836.2--Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.

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

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

1836.209 Construction contracts with architect-engineer firms.

(1) Except as indicated in paragraph (2) of this section, the Associate Administrator for Procurement (Code HS) is the approval authority.

(2) A construction contract may be awarded to the firm that designed the project (or its subsidiaries or affiliates) if the contract is awarded on the basis of performance specifications for the construction of a facility, and it requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(3) In no case shall the firm that prepared the drawings and specifications supervise and inspect, on behalf of the Government, the construction of the facility involved.

1836.213 Special procedures for sealed bidding in construction contracting.

1836.213-3 Invitations for bids.

1836.213-70 Additive and deductive items.

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

1836.213-4 Notice of Award.

(e) Contract delivery or performance schedules, commencement of work, or notices to proceed shall not be expressed in terms of a notice of award. (See 1814.408-1).

Subpart 1836.5-- Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

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

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

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

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

Subpart 1836.6--Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

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

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

(a)(7) The architect-engineer selection board may also establish evaluation criteria regarding the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

1836.602-2 Evaluation boards.

(a) Installations shall establish an architect-engineer selection board to be composed of the selection authority and at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an official from the requiring office; if appropriate, a technical official familiar with any unique subject matter critical to the requirement; and a procurement official (a contracting officer, if feasible) as an ad hoc advisor to the board. Where appropriate, the procurement official may serve as a voting member. Non-Government employees shall not be appointed as voting members.

1836.602-4 Selection authority.

(a) The selection authority shall be appointed in accordance with installation procedures.

1836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The procedures at FAR 36.602-5(a) or (b) may be used at the discretion of the selection authority.

1836.602-70 Selection of architect-engineers for master planning.

(a) **Definition of master plan.** A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) Selection.

(1) Selection of an Architect-Engineer for the development of a master plan in connection with the establishment of a new NASA activity or installation shall be made by the Associate Administrator having institutional responsibility. The report of the architect-engineer selection board will be concurred in at NASA Headquarters by

the Associate Administrator for Management Systems and Facilities, the Associate Administrator for Procurement, the Chief Financial Officer, and the General Counsel.

(2) The Associate Administrator for Management Systems and Facilities shall be responsible for the architect-engineer selection board report required by FAR 36.602-3(d) before presentation to the Associate Administrator having institutional responsibility.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602-2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.605 Government cost estimate for architect-engineer work.

(b) The contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

Subpart 1836.7--Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

(a)(i) Instructions for completing Standard Form 252, Architect-Engineer Contract, are as follows:

(A) *Block 5-Project Title and Location.* Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in the contract's specification/work statement and identify the location of the more detailed description in Block 10.

(B) *Block 6-Contract For (General description of services to be provided).* Include a brief description of the services and state that they are fully set out in the specification/work statement. Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be acquired, clearly specify the date by which they must be completed and add a statement that the Government may extend the period for their performance as provided in the Changes clause of the contract.

(C) *Block 7-Contract Amount.* If the contract is for both design and supervision and inspection services, set out the amounts for each effort separately.

(ii) The services to be furnished by an architect- engineer should be carefully defined during negotiation of the contract and a statement of them inserted in the contract's specification/work statement. The statement should clearly and concisely set forth the nature and extent of the services and include any special services, such as the nature and extent of subsurface exploration prior to designing foundations. A similar statement of supervision and inspection services should be inserted in the specification/work statement if supervision and inspection services are to be acquired.

Subpart 1836.70--Partnering

1836.7001 Definition.

"Partnering" means a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

1836.7002 General.

- (a) The establishment of a partnering environment usually leads to higher quality products completed more quickly at lower overall costs and with fewer accidents and litigation.
- (b) The use of partnering is encouraged as it has been shown to reduce the average contract cost and schedule growth and to reduce contract claims and litigation.
- (c) Partnering is a voluntary contract relationship within the management process that is not to be used to unofficially alter terms of the contract.

1836.7003 Policy.

- (a) Partnering should be used on a contract when the contracting officer, in coordination with the project manager, determines that the benefits to be achieved from its use are expected to be greater than the costs.
- (b) In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:
 - (1) The estimated dollar value of the contract;
 - (2) The complexity of the work to be performed;
 - (3) The contemplated length of the contract; and

(4) The estimated costs to be incurred in conducting the partnership development and team building initial and follow-up workshops.

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236-75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined in accordance with 1836.7003 that the benefits to be derived from partnering exceed the costs.

1852.234-70 Phased Procurement Using Down-Selection Procedures.

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

1852.235-70 Center for AeroSpace Information.

1852.235-71 Key Personnel and Facilities.

1852.235-72 Instructions for Responding to NASA Research Announcements.

1852.236-71 Additive or Deductive Items.

1852.236-72 Bids with Unit Prices.

1852.236-73 Hurricane Plan.

1852.236-74 Magnitude of Requirement.

1852.236-75 Partnering for Construction Contracts.

1852.237-70 Emergency Evacuation Procedures.

1852.237-71 Pension Portability.

1852.237-72 Identification of Uncompensated Overtime.

1852.239-70 Alternate Delivery Points.

1852.241-70 Renewal of Contract.

1852.242-70 Technical Direction.

1852.242-71 Travel Outside of the United States.

1852.242-72 Observance of Legal Holidays.

1852.242-73 NASA Contractor Financial Management Reporting.

1852.243-70 Engineering Change Proposals.

1852.243-71 Shared Savings.

1852.243-72 Equitable Adjustments.

1852.244-70 Geographic Participation in the Aerospace Program.

1852.245-70 Contractor Requests for Government-Owned Equipment.

1852.245-71 Installation-Accountable Government Property.

1852.245-72 Liability for Government Property Furnished for Repair or Other Services.

1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors.

1852.245-74 Contractor Accountable On-Site Government Property.

1852.245-75 Title to Equipment.

1852.245-76 List of Government-Furnished Property.

1852.245-77 List of Installation-Accountable Property and Services.

1852.245-79 Use of Government-Owned Property.

1852.245-80 Use of Government Production and Research Property on a No-Charge Basis.

1852.246-70 Mission Critical Space System Personnel Reliability Program.

1852.246-71 Government Contract Quality Assurance.

1852.246-72 Material Inspection and Receiving Report.

1852.246-73 Human Space Flight Item.

1852.247-71 Protection of the Florida Manatee.

1852.247-72 Advance Notice of Shipment.

1852.247-73 Shipment by Government Bills of Lading.

1852.249-72 Termination (Utilities).

SUBPART 1852.3 PROVISION AND CLAUSE MATRIX

1852.300 Scope of Subpart.

1852.301 Solicitation Provisions and Contract Clauses (Matrix).

PART 1852

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.000 Scope of part.

This part, in conjunction with FAR Part 52, (a) sets forth the provisions and clauses prescribed in the NFS, (b) gives instructions for their use, and (c) presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

Subpart 1852.1--Instructions for Using Provisions and Clauses

1852.101 Using Part 52.

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of Subpart 1801.3 are met.

(e)(1) The NFS matrix in Subpart 1852.3 is formatted similarly to that in the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses.

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b)(i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC,

DFRC, GSFC, CW, JSC, KSC, LARC, LERC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from -90 to -199. For example, the first Johnson Space Center (JSC) provision or clause relating to Part 36 of the FAR or NFS shall be JSC 52.236-90, the second JSC 52.236-91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

1852.236-73 Hurricane Plan.

As prescribed in 1836.570(c), insert the following clause:

**HURRICANE PLAN
(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(d), 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)

1852.236-75 Partnering for Construction Contracts.

As prescribed in 1836.7004, insert the following clause:

**PARTNERING FOR CONSTRUCTION CONTRACTS
(AUGUST 1998)**

(a) The terms "**partnering**" and "**partnership**" used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

1852.237-70 Emergency Evacuation Procedures.

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

**EMERGENCY EVACUATION PROCEDURES
(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 1837.110-70(b), insert the following clause:

**PENSION PORTABILITY
(JANUARY 1997)**

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

- (1) Comply with all applicable Government laws and regulations;
- (2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;
- (3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and
- (4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

- (1) The prime contract requires pension portability;
- (2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed \$2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and
- (3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

1852.239-70 Alternate Delivery Points.

As prescribed in 1839.106-70(a)(1), 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 1839.106-70(a)(2), delete paragraph (b) and substitute the following:

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

(End of clause)

1852.241-70 Renewal of Contract.

As prescribed in 1841.501-70, 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)