

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 255A at Steamboat Springs.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1803, 1804, 1807, 1809, 1813, 1815, 1816, 1819, 1822, 1824, 1825, 1827, 1832, 1836, 1837, 1839, 1842, 1844, 1845, 1852, 1853, and 1870**

**Rewrite of the NASA Far Supplement (NFS)**

**AGENCY:** Office of Procurement, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** In order to streamline and clarify our regulations, parts 1813, 1819, 1825, 1827, 1845, and 1853, and clauses affected by these parts are revised in their entirety. Also included in this final rule are changes to 1803, 1804, 1807, 1815, 1816, 1822, 1824, 1832, 1836, 1837, 1839, 1842, and 1852 to reflect the impact of the rewritten parts, correct editorial errors, and accommodate changes to relate coverage in the Federal Acquisition Regulation (FAR).

**EFFECTIVE DATE:** July 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Tom O'Toole, (202) 358-0847.

**SUPPLEMENTARY INFORMATION:****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. Upon completion of all parts, the NFS will be reissued in a new edition.

**Impact**

NASA certifies that this regulation will not have a significant impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 48 CFR Parts 1803, 1804, 1807, 1809, 1813, 1815, 1816, 1819, 1822, 1824, 1825, 1827 1832, 1836, 1837, 1839, 1842, 1844, 1845, 1852, 1853, and 1870**

Government procurement.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1803, 1804, 1807, 1809, 1813, 1815, 1816, 1819, 1822, 1824, 1825, 1827 1832, 1836, 1837, 1839, 1842, 1844, 1845, 1852, 1853, and 1870 are amended as follows.

1. The authority citation for 48 CFR parts 1803, 1804, 1807, 1809, 1813, 1815, 1816, 1819, 1822, 1824, 1825, 1827, 1832, 1836, 1837, 1839, 1842, 1844, 1845, 1852, 1853, and 1870 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****1803.104 [Revised]**

(2). Section 1803.104 is revised to read as follows:

**1803.104 Procurement integrity.****1803.104-3 Definitions.**

*Agency ethics official* means for Headquarters, the General Counsel and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

**1803.104-5 Disclosure, protection, and marking of proprietary and source selection information. (NASA supplements paragraphs (a) and (c))**

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

(i) Personnel participating in source evaluation board (SEB) procedures (see 1815.612.70) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures and personnel evaluating protests.

(ii) Personnel assigned to the contracting office.

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

(iv) Small business specialists.

(v) Personnel assigned to counsel's office.

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

(vii) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in Subpart 1807.71.

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

(ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104-5(a) (i) through (viii).

(x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in FAR 3.104-3 shall assure that the material is marked with the legend in FAR 3.104-5(c) at the time the material is prepared.

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

**1803.104-10 Violations or possible violations. (NASA supplements paragraphs (a), (b) and (f))**

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

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

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

**PART 1804—ADMINISTRATIVE MATTERS****1804.470-3 [Redesignated]**

3. Section 1804.470-3 is redesignated as section 1804.470-4, and a new section 1804.470-3 is added to read as follows:

**1804.470-3 Security Plan for Unclassified Federal Information Technology Systems.**

When considered appropriate for contract performance, the contracting officer, with the concurrence of the requiring activity and the center automated information security (AIS) manager, may require the contractor to submit for post-award Government approval a detailed Security Plan for Unclassified Federal Information Technology Systems. The plan shall be required as a contract data deliverable that will be subsequently incorporated into the contract as a compliance document after Government approval. The plan shall demonstrate thorough understanding of NMI 2410.7 and NHB 2410.9, and shall include, as a minimum, the security measures and program safeguards to ensure that the information technology resources acquired and used by contractor and subcontractor personnel:

- (a) Operate effectively and accurately;
- (b) Are protected from unauthorized alteration, disclosure, or misuse of information processed, stored, or transmitted;
- (c) Can maintain the continuity of automated information support for Government missions, programs, and functions;
- (d) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the system's integrity and accuracy; and
- (e) Have appropriate technical, personnel, administrative, environmental, and access safeguards.

**PART 1807—ACQUISITION PLANNING**

4. In section 1807.105 a new paragraph (b)(1) is added to read as follows:

**1807.105 Contents of written acquisition plans. (NASA supplements paragraphs (a) and (b))**

\* \* \* \* \*

(b)(1) If the acquisition represents a consolidation of efforts previously contracted for separately, address the reasons for the consolidation, the expected benefits, and any potential adverse impact (including the effect on small, small disadvantaged, and women-owned small business

participation) and planned actions to mitigate the impact (see (1819.202-170).

\* \* \* \* \*

**1807.70 [Added]**

5. Subpart 1807.70 is added to read as follows:

**Subpart 1807.70—Consolidated Contracting****1807.7000 General.**

The Consolidated Contracting Initiative (CCI) is NASA's commitment to the cooperative creation and utilization of contracts, whenever practicable, to meet common Agency needs. CCI aims at improving acquisition efficiency by identifying and logically combining similar requirements. Complete information on the initiative, with its implementation guidance, is available on the Internet (<http://msfcinfo.msfc.nasa.gov/cci/first.html>).

**PART 1809—CONTRACTOR QUALIFICATIONS****1809.106-3 [Amended]**

6. In paragraph (a) to section 1809.106-3, the designation "(a)" is removed.

7. Part 1813 is revised to read as follows:

**PART 1813—SIMPLIFIED ACQUISITION PROCEDURES**

Sec.

1813.000 Scope of part.

**Subpart 1813.1—General.**

1813.103 Policy.

1813.106-2 Purchases exceeding the micro-purchase threshold.

**Subpart 1813.2—Blanket Purchase Agreements**

1813.202 Establishment of blanket purchase agreements (BPAs).

**Subpart 1813.5—Purchase Orders**

1813.501 General.

1813.501-70 Purchase orders under section 8(a) of the Small Business Act.

1813.505 Purchase order and related forms.

**Subpart 1813.70—Governmentwide Commercial Purchase Card**

1813.7000 General.

1813.7001 Cardholders.

1813.7002 Purchase card documentation.

1813.7003 Approving official.

1813.7004 Program officials.

Authority: 42 U.S.C. 2473(c)(1).

**1813.000 Scope of part.**

FAR Part 13 and 1813 do not apply to NASA Research Announcements and Announcements of Opportunity. These acquisitions shall be conducted in

accordance with the procedures in 1835.016-70 and 1872, respectively.

**Subpart 1813.1—General****1813.103 Policy. (NASA supplements paragraphs (e), (f), and (j))**

(e) Except for purchases authorized by 1813.103(f), the Governmentwide commercial purchase card may be used for purchases of \$25,000 or less.

Purchases above the micro-purchase threshold shall comply with all applicable statutory and regulatory requirements, including the following:

(i) Small business set-aside (see FAR 13.105).

(ii) Representations and certifications. The applicable items from the provision at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items shall be obtained for commercial or noncommercial purchases. This information may be obtained orally from vendors.

(iii) Maximum practicable competition (see FAR 13.106-2(a)(3)).

(iv) Implementation of the applicable contract clauses. This requirement may be satisfied by forwarding a completed SF 1449, appropriately modified to reflect purchase card terms, to the awardee after placing the order via the card, provided that the awardee must be notified of, and agree to, the applicability of the SF 1449 clauses when the order is placed.

(f) For purchases up to the simplified acquisition threshold, the Governmentwide commercial purchase card may be used to order and pay for purchases under FAR Part 8 procedures and under the contracts listed in FAR 13.103(f).

(j) Fixed-price purchase orders shall be used for all awards made under simplified acquisition procedures except as provided under the unpriced purchase order method in FAR 13.502.

**1813.106-2 Purchases exceeding the micro-purchase threshold. (NASA supplements paragraph (d))**

(d)(2) For purchases up to \$50,000, documentation shall be limited to a brief notation in the file indicating the rationale for selecting other than the lowest priced offer.

**Subpart 1813.2—Blanket Purchase Agreements****1813.202 Establishment of blanket purchase agreements (BPAs). (NASA supplements paragraph (e))**

(e)(1)(v) Non-GS-1102 or -1105 personnel shall not be authorized to place individual orders under a BPA in an amount greater than \$5,000.

**Subpart 1813.5—Purchase Orders****1813.501 General. (NASA supplements paragraph (a))**

(a) See 1813.103(j).

**1813.501–70 Purchase orders under section 8(a) of the Small Business Act.**

Fixed-price purchase orders made using simplified acquisition procedures are authorized for 8(a) acquisitions under the simplified acquisition threshold.

**1813.505 Purchase order and related forms. (NASA supplements paragraphs (a) and (b))**

(a)(2) Installations may use locally prescribed forms.

(3) Installations may use locally prescribed forms.

(b)(1)(i) The SF 44 may be used for purchases of aviation fuel and oil of \$10,000 or less.

**Subpart 1813.70—Governmentwide Commercial Purchase Card****1813.7000 General.**

The General Services Administration (GSA) manages the Governmentwide commercial purchase card program. Purchases made with the card shall comply with the instructions and procedures issued by GSA as well as the applicable parts of the FAR and the NFS. Centers shall establish and maintain the administrative procedures and management controls required by GSA.

**1813.7001 Cardholders.**

(a) The procurement officer shall designate individual cardholders in accordance with center procedures, subject to the following limitations:

(1) Cardholders for purchases greater than \$2,500 shall be contracting officers appointed in accordance with FAR 1.6 and 1801.603.

(2) Personnel other than contracting officers may be designated as cardholders for purchases of \$2,500 or less provided they complete training adequate to ensure appropriate use of the purchase card.

(b) The procurement officer's designation shall be in writing and shall specify the scope of the cardholder's authority.

**1813.7002 Purchase card documentation.**

Documentation of purchases shall be minimized. For transactions below the micro-purchase threshold, the card holder shall maintain a brief log of purchases and a file of monthly purchase card statements indicating whether item receipt has occurred. For purchases above the micro-purchase threshold, see 1813.106–2(d)(2).

**1813.7003 Approving official.**

The approving official is the individual who reviews and approves a cardholder's monthly statement of purchases. The approving official shall be the cardholder's immediate or higher level supervisor; in no case shall cardholders approve their own purchases. Unless center procedures otherwise provide for their designation, the procurement officer shall designate approving officials.

**1813.7004 Program officials.**

(a) The Headquarters Office of Procurement (Code HC) is the agency program coordinator.

(b) The procurement officer shall identify the center program coordinator and the center billing office point of contract, and provide their names to the agency program coordinator.

**PART 1815—CONTRACTING BY NEGOTIATION**

8–9. In section 1815–508–70 the following sentence is added to the end to read as follows:

**1815.508–70 NASA prohibitions.**

\* \* \* Any other disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

**1815.611 [Amended]**

10. In paragraph (d)(iii) to section 1815.611, the citation “1815.1004–70” is revised to read “1815.1006–70”, and in the last sentence, the phrase “to use in debriefing unsuccessful offerors” is revised to read “to use in postaward debriefing of unsuccessful offerors”.

**1815.804–1 [Amended]**

11. In section 1815.804–1, paragraph (b)(2)(iii) is removed.

**1815.805–5 [Amended]**

12. In section 1815.805–5, a new paragraph (a)(1)(E) is added to read as follows:

**1815.805–5 Field pricing support.**

(a)(1)(A) \* \* \*

(E) Requests for field pricing assistance may be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.

**1815.1003 [Redesignated]**

13. Section 1815.1003 is redesignated as section 1815.1004.

**1815.1004 [Amended]**

14. In the introductory text to the newly designated section 1815.1004, the

citation “FAR 15.1003” is revised to read “FAR 15.1004”.

**1815.1004–70 [Redesignated]**

15. Section 1815.1004–70 is redesignated as section 1815.1006–70, and the heading is revised to read “Debriefing of offerors—Major System acquisitions”.

**1815.1006 [Added]**

16. Section 1815.1006 is added to read as follows:

**1815.1006 Postaward debriefing offerors.****PART 1816—TYPES OF CONTRACTS**

**1816.404, 1816.404–2, 1816.404–270, 1816.404–271, 1816.404–272, 1816.404–273, 1816.404–274, 1816.404–275, 1816.405, 1816.405–70 [Redesignated]**

17–18. The following sections are redesignated as follows:

| Section            | Redesignation |
|--------------------|---------------|
| 1816.404 .....     | 1816.405      |
| 1816.404–2 .....   | 1816.405–2    |
| 1816.404–270 ..... | 1816.405–270  |
| 1816.404–271 ..... | 1816.405–271  |
| 1816.404–272 ..... | 1816.405–272  |
| 1816.404–273 ..... | 1816.405–273  |
| 1816.404–274 ..... | 1816.405–274  |
| 1816.404–275 ..... | 1816.405–275  |
| 1816.405 .....     | 1816.406      |
| 1816.405–70 .....  | 1816.406–70   |

19. Paragraph (b)(2)(iii) of the newly designated section 1816.405–270 is revised to read as follows:

**1816.405–270 CPAF contracts.**

(a) \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Under a performance-based contract when it is determined to be necessary to motivate the contractor toward exceptional performance (see FAR 16.405–2(b)(ii)) and the increased level of performance justifies the additional administrative expense. When an award fee incentive is used in this instance, the basic contract type shall be other than CPAF (e.g., CFI or FPIF). The potential award fee shall not be used to incentivize cost performance.

**1816.405–271 [Amended]**

20. In paragraph (a) to the newly redesignated section 1816.405–271, the citation “1816.404–273(a)” is revised to read “1816.405–273(a)”, and in paragraph (b), the citations “1816.404–273” and “1816.404–275” are revised to

read "1816.405-273" and "1816.405-275", respectively.

#### **1816.405-273 [Amended]**

21. In paragraph (c) to the newly redesignated section 1816.405-273, the citation "1816.404-275" is revised to read "1816.405-275", and a new paragraph (e) is added to read as follows:

#### **1816.405-273 Award fee evaluation.**

\* \* \* \* \*

(e) Interim and final evaluations may be used to provide past performance information during the source selection process and should be marked and controlled as "Source Selection Information."

#### **1816.405-274 [Amended]**

22. In paragraph (d)(2) to the newly redesignated section 1816.405-274, the citations "1816.404-275" and "1816.404-274(d)(3)" are revised to read "1816.405-275" and "1816.405-274(d)(3)", respectively; in paragraph (e), the citation "1816.404-270(b)(2)(iii)" is revised to read "1816.405-270(b)(2)(iii)"; the designated paragraphs (f) and (g) are redesignated as paragraphs (g) and (h); and a new paragraph (f) is added to read as follows:

#### **1816.405-274 Award fee evaluation factors.**

\* \* \* \* \*

(f) The contractor's performance against the subcontracting plan incorporated in the contract shall also be evaluated. Small disadvantaged business utilization may be an area of particular emphasis, including the contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable. The evaluation weight given to subcontracting plan performance should be significant (up to 15 percent of available award fee). It should motivate the contractor to focus management attention to subcontracting with small, small disadvantaged, and women-owned small business concerns to the maximum extent practicable consistent with efficient contract performance.

#### **1816.405-275 [Amended]**

23. In paragraph (d) to the newly redesignated section 1816.405-275, the citation "1816.404-275(b)" is revised to read "1816.405-275(b)".

#### **1816.406-70 [Amended]**

24. In paragraphs (a) and (b) to the newly redesignated section 1816.406-

70, the citation "FAR 16.405(e)" is revised to read "FAR 16.406(e)".

25-28. Part 1819 is revised to read as follows:

### **PART 1819—SMALL BUSINESS PROGRAMS**

Sec.

1819.001 Definitions.

#### **Subpart 1819.2—Policies**

1819.201 General policy.

1819.202 Specific policies.

1819.202-1 Encouraging small business participation in acquisitions.

1819.202-170 Contract consolidations.

#### **Subpart 1819.3—Determination of Status as a Small Business Concern**

1819.302 Protesting a small business representation.

#### **Subpart 1819.5—Set-Asides for Small Business**

1819.502 Setting aside acquisitions.

1819.502-70 Non-initiation of set-asides.

1819.502-3 Partial set-asides.

1819.502-370 NASA reporting requirements.

1819.505 Rejecting Small Business Administration recommendations.

1819.506 Withdrawing or modifying set-asides.

#### **Subpart 1819.6—Certificates of Competency**

1819.602 Procedures.

1819.602-1 Referral.

1819.602-3 Resolving differences between the agency and the Small Business Administration.

1819.602-370 NASA procedures.

#### **Subpart 1819.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business and Women-Owned Small Business Concerns**

1819.705-2 Determining the need for a subcontracting plan.

1819.705-4 Reviewing the subcontracting plan.

1819.705-470 Acquisition-specific subcontracting goals.

1819.708 Solicitation provisions and contract clauses.

1819.708-70 NASA solicitation provision and contract clause.

#### **Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)**

1819.804 Evaluation, offering, and acceptance.

1819.804-1 Agency evaluation.

#### **Subpart 1819.10—Small Business Competitiveness Demonstration Program**

1819.1005 Applicability.

#### **Subpart 1819.70—NASA 8 Percent Goal**

1819.7000 General.

1819.7001 Definitions.

1819.7002 Contracting officer responsibility.

1819.7003 Contract clause.

#### **Subpart 1819.71—NASA Rural Area Small Business Plan**

1819.7101 Definition.

1819.7102 General.

1819.7103 Solicitation provision and contract clause.

#### **Subpart 1819.72—NASA Mentor-Protégé Program**

1819.7201 Scope of subpart.

1819.7202 Definitions.

1819.7203 Non-affiliation.

1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protégé program to NASA contractors.

1819.7205 General policy.

1819.7206 Incentives for prime contractor participation.

1819.7207 Measurement of Program success.

1819.7208 Mentor firms.

1819.7209 Protégé firms.

1819.7210 Selection of protégé firms.

1819.7211 Application process for mentor firms to participate in the Program.

1819.7212 OSDBU review and approval process of agreement.

1819.7213 Agreement contents.

1819.7214 Developmental assistance.

1819.7215 Obligation.

1819.7216 Internal controls.

1819.7217 Reports.

1819.7218 Program review.

1819.7219 Solicitation provision and contract clauses.

**Authority:** 42 U.S.C. 2473(c)(1).

#### **1819.001 Definitions.**

*High-Tech* as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

### **Subpart 1819.2—Policies**

#### **1819.201 General policy. (NASA supplements paragraphs (a), (c), and (d))**

(a)(i) NASA is committed to providing to small, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) Congress established an 8 percent goal for NASA as described in 1819.7000. The Federal Acquisition Streamlining Act of 1994 has made NASA subject to a 5 percent goal for prime and subcontract awards to small disadvantaged business concerns, Historically Black Colleges and

Universities, and minority institutions. Unlike the NASA 8 percent goal, the 5 percent goal does not include prime and subcontract awards to women-owned small businesses. NASA also annually negotiates small, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). These goals are Agencywide goals.

(c) The Associate Administrator for Small and Disadvantaged Business Utilization (Code K) is the Agency official responsible for carrying out the duties in FAR 19.201(c).

(d)(i) The center director shall designate a qualified individual in the contracting office as a small business specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in NASA acquisitions. The small business specialist shall also perform other functions specifically set forth in this section 1819.201 or that the procurement officer may prescribe, with the concurrence of the Associate Administrator for Small and Disadvantaged Business Utilization, for implementing the Small Business Program. When the center director considers that the volume of acquisitions or the functions relating to acquisitions at the center do not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(ii) Small business specialists appointed under paragraph (d)(i) of this subsection shall perform the following duties, as the procurement officer determines appropriate to the installation:

(A) Maintain a program designed to locate capable small business sources, including those located in labor surplus areas, for current and future acquisitions.

(B) Coordinate inquiries and requests for advice from small business concerns on acquisition matters.

(C) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including making recommendations for initiation of set-asides (see FAR 19.5 and 19.8) and for taking action in accordance with FAR 19.506(b) and 1819.502-70. Participate and provide input early in the acquisition planning phase of proposed acquisitions, including acquisition strategy meetings.

(D) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, work with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for current or future acquisitions will be available.

(E) Review acquisitions for possible breakout of items suitable for acquisition from small business concerns.

(F) Advise small business concerns regarding financial assistance available under laws and regulations, assist such concerns in applying for such assistance, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(G) Participate in responsibility determinations (see FAR 9.103) when small business concerns are involved.

(H) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705-4).

(I) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(J) Ensure that participation of small business concerns is accurately reported.

(K) Make available to SBA copies of solicitations when requested.

(L) Act as liaison between contracting officers and SBA area offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved.

(M) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(N) When a small business concern's offer has been rejected for nonresponsiveness or nonresponsibility, assist that concern, upon its request, in understanding such requirements for future awards.

(O) Advise center personnel, as necessary, on new Governmentwide and Agency-approved small business programs and initiatives.

## **1819.202 Specific policies.**

### **1819.202-1 Encouraging small business participation in acquisitions.**

### **1819.202-170 Contract consolidations.**

Prior to effecting a contract consolidation valued at \$5 million or more, including options, which will not be exclusively reserved for small or 8(a) firms, the contracting officer, with assistance from the small business specialist and the cognizant technical office, shall prepare an impact assessment of the effects of the consolidation on present and future contracting and subcontracting opportunities for small, small disadvantaged, and women-owned small business. The impact assessment shall address the reasons for the proposed consolidation (especially where apparently unrelated efforts are being combined), the expected benefits, and any actions planned to mitigate or eliminate the impact on small business entities. The impact assessment shall be forwarded to the Associate Administrator for Procurement (Code HS) for concurrence by cognizant Headquarters offices and approval by the Associate Deputy Administrator (Technical).

### **Subpart 1819.3—Determination of Status as a Small Business Concern**

#### **1819.302 Protesting a small business representation. (NASA supplements paragraph (d))**

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

### **Subpart 1819.5—Set-Asides for Small Business**

#### **1819.502 Setting aside acquisitions.**

#### **1819.502-70 Non-initiation of set-asides.**

(a) All cases involving the non-initiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a decision by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review.

(b) If the small business specialist recommends that an individual acquisition or a class of acquisition, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) When an SBA representative is assigned and available and the contracting officer disapproves the

small business specialist's recommendation, the contracting officer shall promptly refer the case to the SBA representative for review. The small business specialist shall take no further appeal action. The SBA representative must either concur with the decision or appeal the case to the procurement officer under FAR 19.505. If the procurement officer approves the contracting officer's decision and the SBA appeals under FAR 19.505(c), the procurement officer shall forward the required written justification, including a history of discussions between the center and the SBA and rationale for the decision, to the Headquarters Office of Procurement (HS).

(d) When an SBA representative is not assigned or available and the contracting officer disapproves the small business specialist's recommendation, the small business specialist may appeal in writing to the procurement officer. The procurement officer's decision shall be final. The contracting officer shall place a memorandum of the procurement officer's decision in the contract file. If the procurement officer's decision approves the contracting officer's action, the small business specialist shall forward complete documentation of the case to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

(e) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of nonconcurrence in a recommended set-aside action.

#### **§ 1819.502-3 Partial set-asides.**

#### **§ 1819.502-370 NASA reporting requirements.**

The contracting officer shall separately report, in accordance with Subpart 1804.6, awards of the non-set-aside portions of small business set-aside acquisitions.

#### **1819.505 Rejecting Small Business Administration recommendations.**

See 1819.502-70.

#### **1819.506 Withdrawing or modifying set-asides. (NASA supplements paragraph (b))**

(b) If an SBA representative is not assigned or available, and the small business specialist disagrees with the contracting officer's written decision of withdrawal or modification of a set-aside determination, the small business specialist may appeal to the procurement officer in accordance with the procedures in 1819.502-70(d).

### **Subpart 1819.6—Certificates of Competency**

#### **1819.602 Procedures.**

##### **1819.602-1 Referral. (NASA supplements paragraph (a))**

(a) On proposed awards exceeding the simplified acquisition threshold, the contracting officer should consider requesting a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible. The scope of the preaward survey request should be limited to those elements of responsibility that are questioned.

(2) The contracting officer shall forward a copy of the referral to SBA through the procurement officer to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

##### **1819.602-3 Resolving differences between the agency and the Small Business Administration.**

##### **1819.602-370 NASA procedures.**

(a) When agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall forward to the Headquarters Office of Procurement (Code HS) on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a COC, and the contracting officer's comments. The contracting officer shall suspend acquisition action until informed by Code HS of the final decision in the case.

(b) If the Office of Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a COC, Code HS shall inform the contracting officer.

(c) If the Office of Procurement agrees with the contracting officer's recommended appeal action, the Associate Administrator for Procurement shall forward the appeal through the Office of Small and Disadvantaged Business Utilization (Code K) to SBA Headquarters.

### **Subpart 1819.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**

#### **1819.705-2 Determining the need for a subcontracting plan. (NASA supplements paragraph (d))**

(d) Solicitations for competitive negotiated acquisitions shall require

proposed subcontracting plans with initial proposals (see 1819.708(b)(1)). For sole source negotiated acquisitions, the contractor shall be required to submit a proposed subcontracting plan with the proposal.

#### **1819.705-4 Reviewing the subcontracting plan.**

#### **1819.705-470 Acquisition-specific subcontracting goals.**

Section 1819.201 addresses Agencywide goals at the combined prime and subcontract levels. Appropriate subcontracting goals for an individual acquisition, however, are to be independently determined on the basis of the specific circumstances of the acquisition, consistent with FAR 19.705-4 and 1819.7002(b), and not on the basis of an Agencywide or center goal. Acquisition-specific subcontracting goals should reflect maximum practicable opportunities for all categories of small business concerns to participate in NASA programs, consistent with efficient performance. The methods outlined in NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, may also be useful in establishing reasonable subcontracting goals for small and women-owned small business concerns.

#### **1819.708 Solicitation provisions and contract clauses. (NASA supplements paragraph (b))**

(b)(1) The contracting officer shall use the clause at FAR 52.219-9 with its Alternate II when contracting by negotiation.

#### **1819.708-70 NASA solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 1852.219-73, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219-9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.219-75, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219-9, except for contracts covered by an approved commercial plan.

**Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)****1819.804 Evaluation, offering, and acceptance.****1819.804-1 Agency evaluation.**

The small business specialist shall review and evaluate all acquisition requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

**Subpart 1819.10—Small Business Competitiveness Demonstration Program****1819.1005 Applicability. (NASA supplements paragraph (b))**

(b) The targeted industry categories for NASA and their Standard Industrial Classification (SIC) codes are:

SIC—Industry  
Code—Category  
3571—Electronic Computers  
3577—Computer Peripheral Equipment, not elsewhere classified  
3663—Radio & TV Broadcasting and Communications Equipment  
3764—Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts  
3769—Guided Missile and Space Vehicle Parts and Auxiliary Equipment, not elsewhere classified  
3812—Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments  
3827—Optical Instruments and Lenses  
7371—Computer Programming Services  
7373—Computer Integrated Systems Design  
7379—Computer Related Services, not elsewhere classified.

**Subpart 1819.70—NASA 8 Percent Goal****1819.7000 General.**

Public Laws 101-144, 101-507, and 102-389 require the NASA Administrator to ensure, to the fullest extent possible, that at least 8% of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

**1819.7001 Definitions.**

(a) *Small Disadvantaged Business (SDB) concern* and *Women-Owned Small Business (WOSB) concern* are defined in FAR 19.001.

(b) *Historically Black College or University (HBCU)* and *Minority Institution (MI)* are defined in FAR 26.301.

**1819.7002 Contracting officer responsibility.**

(a) Contracting officers must seek out as potential sources entities identified in 1819.7001 and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

(b) NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, contains guidance on developing realistic goals. It is applicable to acquisitions expected to exceed \$50 million, including options. The methodology may be used for lesser value acquisitions.

**1819.7003 Contract clause.**

The contracting officer shall insert the clause at 1852.219-76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

**Subpart 1819.71—NASA Rural Area Small Business Plan****1819.7101 Definition.**

*Rural area* means a county with a population of fewer than twenty thousand individuals.

**1819.7102 General.**

Pursuant to Public Law 100-590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

**1819.7103 Solicitation provision and contract clause.**

The contracting officer shall insert the clause at 1852.219-74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed \$500,000 (\$1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely

outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

**Subpart 1819.72—NASA Mentor-Protégé Program****1819.7201 Scope of subpart.**

The NASA Mentor-Protégé Program is designed to incentivize NASA prime contractors to assist small disadvantaged business concerns, Historically Black colleges and Universities, minority institutions, and women-owned small business concerns, in enhancing their capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

**1819.7202 Definitions.**

*High-Tech* is defined in 1819.001.

**1819.7203. Non-affiliation.**

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the Program. In addition, NASA shall not consider partial ownership, up to 10 percent, of a Department of Defense (DOD)-sanctioned protégé firm by its DOD mentor to constitute affiliation.

**1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protégé program to NASA contractors.**

(a) In accordance with the benefits authorized by the DOD Mentor-Protégé Program (Public Law 101-510, Section 831, as amended by Public Law 102-190, Section 814), a NASA contractor who is also an approved DOD mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the protégés which they are assisting under the DOD Program (Public Law 101-510, Section 831(f)(2)).

(c) NASA prime contractors may count the costs of developmental assistance provided of protégés being assisted under the DOD Program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102-190,



Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and minority institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features from the DOD Mentor-Protégé Program to NASA prime contractors. NASA mentors will be held to show "good faith" by providing actual developmental assistance beyond transferring credit from activity in the DOD Program to NASA subcontracting plans.

#### **1819.7205 General policy.**

(a) Eligible large business prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", who have at least one active subcontracting plan, and who are approved as mentor firms may enter into agreements with eligible entities (as defined in 1819.7209) as protégés to provide appropriate developmental assistance to enhance the capabilities of protégés to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", and that are capable of providing developmental assistance to protégés, may also be approved as mentors. An active mentor-protégé arrangement requires the protégé to be a subcontractor under the mentor's prime contract with NASA.

(b) The pilot Program has a duration of three years commencing from March 24, 1995. During this period, eligible mentor firms, which have received approval by NASA to participate in the Program pursuant to 1819.7212, may enter into agreements with protégé firms.

(c) For the pilot phase of the Program, mentor-protégé activity will be limited to cost-plus-award-fee contracts.

(d) Costs incurred by a mentor to provide developmental assistance, technical or managerial assistance described in 1819.7214, are allowable

#### **1819.7206 Incentives for prime contractor participation.**

(a) During source selection Mentor-Protégé will be evaluated as part of SDB utilization under the Mission Suitability factor. Under Mission Suitability, SDB utilization will be either a subfactor or an element under a subfactor.

(b) Under cost-plus-award fee contracts, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. For purposes of earning award fee, the mentor firm's performance shall be evaluated against the criteria described in the clause at 1852.219-79, Mentor Requirements and Evaluation.

#### **1819.7207 Measurement of Program success.**

The overall success of the NASA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontractors awarded to protégés by mentor firms under NASA contracts since the date of entry into the Program;

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the Program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protégé firm by its mentor firm; and

(d) An increase in subcontracting with protégé firms in industry categories where they have not traditionally participating within the mentor firm's activity.

#### **1819.7208 Mentor firms.**

(a) Eligibility:

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by FAR 19.7; and

(3) Small business prime contractors that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors and suppliers.

(b) Mentors will be encouraged to identify and select as protégés:

(1) A broad base of firms including those defined as emerging firms (e.g., a

protégé whose size is no greater than 50 percent of the size standard applicable to the SIC code assigned to a contracting opportunity);

(2) Firms in addition to those with whom they have established business relationships; and

(3) High-tech firms.

#### **1819.7209 Protégé firms.**

(a) For selection as a protégé, a firm must be:

(1) An SDB, HBCU, MI, or WOSB;

(2) Certified as small in the SIC code for the services or suppliers to be provided by the protégé under its subcontract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) A protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representation by potential protégés that they meet the specified eligibility requirements.

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to the NASA Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

#### **1819.7210 Selection of protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protégé.

(c) The selection of protégé firms by mentor firms may not be protested, except as in paragraph (d) of this section.

(d) A protest regarding the size of eligibility status of an entity selected by a mentor to be a protégé shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) (Code K) of the protest.

#### **1819.7211 Application process for mentor firms to participate in the Program.**

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the Program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.



(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of the NASA field center where support is provided;

(3) The number of proposed mentor-protégé arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar value of subcontracts awarded under NASA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities defined as protégés.

(6) Information on the proposed types of developmental assistance. For each proposed mentor-protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protégé agreement under the NASA Program, that they intend to cooperate in the establishment of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in 1819.7215 and all other provisions governing the Program.

#### **1819.7212 OSDBU review and approval process of agreement.**

(a) The information specified in 1819.7211(b) is reviewed by the NASA OSDBU. This review will be completed no later than 30 days after receipt by the OSDBU. The OSDBU will provide a copy of the submitted information to the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates an agreement with the protégé; and

(2) Submits an original and two (2) copies of the agreement to the OSDBU for approval by the NASA Mentor-protégé program manager, the NASA technical program manager, and the contracting officer.

(c) Upon agreement approval, the mentor may implement a developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

#### **1819.7213 Agreement contents.**

The contents of the agreement must contain:

(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSDBU, and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protégé;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, to include a description of the subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégé developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protégé firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

#### **1819.7214 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to—

(1) Financial management,  
(2) Organizational management,  
(3) Overall business management/

planning, and  
(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of

subcontracts under NASA contracts;

(d) Progress payments based on costs. The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

(e) Advance payments. While a mentor can make advance payments to its protégés who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if advance payments have been authorized in accordance with statute and regulation;

(f) Loans;

(g) Rent-free use of facilities and/or equipment;

(h) Property; and

(i) Temporary assignment of personnel to the protégé for purpose of training.

#### **1819.7215 Obligation.**

(a) The mentor or protégé may voluntarily withdraw from the Program as mutually agreed by both mentor and protégé.

(b) Mentor and protégé firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the pilot program period or the conclusion of their effort, whichever comes first.

#### **1819.7216 Internal controls.**

(a) The NASA OSDBU will manage the Program. Internal controls will be established by the OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing semi-annual progress reports submitted by mentors and protégés, if any, on protégé development to measure protégé progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where mentor-protégé activity is on-going.

(b) NASA may terminate mentor-protégé agreements if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA will terminate an agreement or exclude a particular entity by sending a written notice to the affected party specifying the action being taken and the effective date of that action. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement, as required in 1819.7213(h).

#### 1819.7217 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protégé program manager, the NASA OSDBU, to include information as outlined in 1852.219-79(b).

(b) Protégés are encouraged to submit semi-annual reports to the OSDBU on Program progress pertaining to their mentor-protégé agreement. However, costs associated with the preparation of these reports are unallowable costs under Government contracts and will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protégé Program in his quarterly 'Strengths and Weaknesses' evaluation report. A copy of these comments, as pertains to the technical effort and protégé development, will be provided to the OSDBU and the contracting officer.

(d) The NASA Mentor-Protégé program manager will submit semi-annual reports to the cognizant contracting officer regarding the participating prime contractor's performance in the Program for use in the award fee determination process.

#### 1819.7218 Program review.

At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé, as appropriate, will formally brief the NASA OSDBU, the technical program manager, and the contracting officer regarding Program accomplishments pertaining to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

#### 1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219-77, NASA

Mentor-Protégé Program, in all cost-plus-award-fee solicitations and contracts with subcontracting plans or in the case of small business set-asides exceeding \$500,000 (\$1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the clause at 1852.219-79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

### PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

#### 1822.604-2 [Amended]

29. In section 1822.604-2, paragraph (c) is redesignated as paragraph (b).

#### 1822.608, 1822.608-4 [Removed]

30. Sections 1822.608 and 1822.608-4 are removed.

### PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

#### 1824.202 [Redesignated]

31. Section 1824.202 is redesignated as 1824.203.

32. Part 1825 is revised to read as follows:

### PART 1825—FOREIGN ACQUISITION

Sec.

1825.000 Scope of part.

1825.000-70 Definition.

#### Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

1825.101-70 NASA definition.

1825.102 Policy.

1825.103 Agreements with certain foreign governments.

1825.103-70 Canadian end products.

1825.105 Evaluating offers.

1825.108 Excepted articles, materials, and supplies.

#### Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.

1825.207 Solicitation provisions and contract clauses.

1825.207-70 NASA contract clause.

#### Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies.

#### Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart.

1825.402 Policy.

1825.403 Exceptions.

1825.405 Procedures.

#### Subpart 1825.6—Customs and Duties

1825.602 Policy.

1825.603 Procedures.

1825.603-70 NASA procedures.

1825.605 Contract clause.

1825.605-70 NASA contract clause.

#### Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 Omission of Audit clause.

#### Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

1825.7001 Definition.

1825.7002 Policy.

1825.7003 Procedure.

**Authority:** 42 U.S.C. 2473(c)(1).

**1825.000 Scope of part.**

**1825.000-70 Definition.**

*Agency head*, for the purposes of this part, is the Associate Administrator for Procurement unless specifically stated otherwise.

#### Subpart 1825.1—Buy American Act—Supplies

**1825.101 Definitions.**

**1825.101-70 NASA definition.**

*Canadian end product*, or an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.401 applies.

#### 1825.102 Policy. (NASA supplements paragraphs (a) and (b))

(a)(3)(A) The procurement officer shall send proposed public interest determinations to the Associate Administrator for Procurement (Code HS) for approval.

(B) See 1825.103-70(A) for a blanket determination regarding Canadian end products.

(a)(4) The items listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or a satisfactory quality.

(b)(1) Contracting officers may make determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. The following is the format for nonavailability determinations:

**Determination of Nonavailability**

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by NFS 1825.102(b)(1), I hereby make the following findings:

- a. (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)
- b. (Enter the name and address of the proposed contractor or supplier and the country of origin of the items.)
- c. (Include a brief statement of the necessity for the acquisition.)
- d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there is no known domestic item that can be used as a reasonable substitute, make a statement to this effect.)

On the basis of these findings, I determine that the item(s) described in paragraph a. above is/are not mined, produced, or manufactured (or the articles, materials, or supplies from which the item(s) is/are manufactured are not mined, produced, or manufactured) in the United States in sufficient and reasonably available quantities of a satisfactory quality.

Accordingly, the Buy American Act requirement that acquisition be made from domestic sources and that the item(s) be of domestic origin is not applicable to this acquisition, since the acquisition is within the Buy American Act's nonavailability exception.

Authority is granted to acquire the above-described item(s) of foreign origin (country or origin) at an estimated total cost of \$\_\_\_\_\_, including duty and transportation costs to destination.

(Date) \_\_\_\_\_  
Contracting Officer \_\_\_\_\_

**1825.103 Agreements with certain foreign governments.****1825.103-70 Canadian end products.**

(a) The Associate Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.101-70. Accordingly, contracting officers shall evaluate all offers for such Canadian end products on a parity with offers for domestic and products, except that applicable duty (whether or not a duty free entry certificate may be issued) shall be included in evaluating offers for Canadian end products.

(b) See FAR 25.402(a)(3)(ii) for evaluation of Canadian end products with values in excess of 25,000 as defined in FAR 25.401.

**1825.105 Evaluating offers. (NASA supplements paragraphs (a) and (c))**

(a) To make the price comparison between domestic and foreign offers, the

contracting officer shall increase the price of the foreign offer by 6- or 12-percent, as applicable. If the application of the differential results in a tie between the foreign and domestic offers, award shall be made to the domestic offeror.

(c) The FAR requirement to apply both 6- and 12-percent factors pertains only when the lowest acceptable domestic offer is from a small business concern.

**1825.108 Excepted articles, materials, and supplies. (NASA supplements paragraph (a))**

(a) See 1825.102(a)(4) and 1825.202(a)(3).

**Subpart 1825.2—Buy American Act—Construction Materials****1825.202 Policy. (NASA supplements paragraph (a))**

(a)(2) The construction materials listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. In addition, subject to the approval of the head of the contracting activity when required, contracting officers may make determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. See 1825.102(b)(1) for the determination of nonavailability format.

**1825.207 Solicitation provisions and contract clauses.****1825.207-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.225-71, Nondomestic Construction Materials, in all contracts for construction.

**Subpart 1825.3—Balance of Payments Program****1825.304 Excess and near-excess foreign currencies. (NASA supplements paragraph (c))**

(c) The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

**Subpart 1825.4—Trade Agreements****1825.400 Scope of subpart. (NASA supplements paragraph (b))**

(b) The Buy American Act and the Balance of Payments Program apply to all acquisitions of Japanese end products or services in excess of \$2,500.

**1825.402 Policy. (NASA supplements paragraph (c))**

(c)(3) Waiver under the Trade Agreements Act is not applicable to acquisitions of Japanese end products or services in excess of \$2,500.

**1825.403 Exceptions. (NASA supplements paragraph (c))**

(c)(2) If a contracting officer considers an individual acquisition to be a purchase "indispensable for national security or for national defense purposes" and appropriate for exclusion from the provisions of FAR 25.4 and of this Subpart 1825.4, the contracting officer shall submit a request with supporting rationale to the Headquarters Office of External Relations (Code I) for coordination with the Office of the U.S. Trade Representative.

**1825.405 Procedures.**

Solicitations shall require that applicable duty charges be included in the offered price of an eligible product, whether or not duty-free certificates are obtained. Duty charges shall be included in the price evaluation.

**Subpart 1825.6—Customs and Duties****1825.602 Policy.**

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR 1217.

**1825.603 Procedures.****1825.603-70 NASA procedures.**

(a) The following officials are authorized to certify that articles are eligible for duty free entry:

(1) Procurement officers, through delegation from the Associate Administrator for Procurement, for articles imported into the United States that are acquired by NASA or other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is, or will be, vested in the U.S. Government in accordance with the terms of the contract or subcontract. All duty-free certificates (see paragraph (b) of this section for format) shall be coordinated with the center Chief Counsel. Procurement officers shall maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

(2) The Associate Administrator for External Relations (Code I) for articles imported pursuant to international agreements.

(3) The Associate Administrator for Space Flight (Code M) for articles imported under agreements other than those identified in paragraph (a) (1) and (2) of this section, including launch service agreements.

(b) Procurement officers shall complete Customs Service Form CF 7501 (Entry Summary) and an appropriate certification when approving duty free exemption for articles acquired by NASA.

(1) For a single import, use the following certification format specified in 14 CFR 1217.104(a):

Articles for the National Aeronautics and Space Administration

Item 9808.00.80, Harmonized Tariff Schedule of the United States

Program: (Insert name of NASA Program)

I hereby certify that the articles identified in [attached invoice] are being imported for the use of the National Aeronautics and Space Administration (NASA) in accordance with 9808.00.80, Harmonized Tariff Schedule of the United States.

Name \_\_\_\_\_  
Date \_\_\_\_\_

(2) For a series of imports under a specific acquisition, use the certification format in paragraph (b)(1) of this section and add the following paragraph specified in 14 CFR 1217.104(c) before the signature block:

Before this certification is used to obtain duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation, who is designated by the Installation Director, shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certification or its attachments. This verification and this certification shall be presented to the U.S. Customs-Service at the time of entry for the particular articles is sought.

#### **1825.605 Contract clause.**

#### **1825.605-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.225-73, Duty-Free Entry Supplies, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR 25.604 and 1825.603.

#### **Subpart 1825.9—Additional Foreign Acquisition Clauses**

##### **1825.901 Omission of Audit clause. (NASA supplements paragraph (c))**

(c) The Administrator is the approval authority for waivers. The contracting

officer shall submit the waiver request, consisting of the determination and findings prescribed in FAR 25.901(d) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

#### **Subpart 1825.70—Foreign Contracts**

##### **1825.7000 Scope of subpart.**

This subpart prescribes policy and procedures for negotiating foreign contracts.

##### **1825.7001 Definition.**

*Foreign contract acquisition*, as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of government-to-government agreements;

(b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico;

(c) Contracts with the Canadian Commercial Corporation; or

(d) Acquisition of books and periodicals from foreign sources of supply.

##### **1825.7002 Policy.**

(a) Each contracting office (including NMO JPL) shall coordinate with the Headquarters Office of External Relations (Code I), before initiating any foreign contract acquisition if the acquisition is valued above \$100,000 or involves—

(1) Importing or exporting goods or technical data from or to a country listed in 22 FR 126.1 (a) or (d) (Subchapter M, the International Traffic in Arms Regulations);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR Part 121 which require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR Part 744 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR Part 744, Supplements 1 through 3; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control,

embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through Headquarters Code I.

##### **1825.7003 Procedure.**

The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in 1825.7002 shall submit the following information to Headquarters Code I—

(a) The name of the foreign entity, the country or countries involved, and the purpose of the contract;

(b) The Space Act agreement(s) involved (pursuant to NMI 1050.9), if any,

(c) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and

(d) The reason why the acquisition is being placed with a foreign entity.

33. Part 1827 is revised as set forth below:

#### **PART 1927—PATENTS, DATA, AND COPYRIGHTS**

Sec.

1827.000 Scope of part.

##### **Subpart 1827.3—Patent Rights Under Government Contracts**

1827.301 Definitions.

1827.302 Policy.

1827.303 Contract clauses.

1827.303-70 NASA solicitation provisions and contract clauses.

1827.304 Procedures.

1827.304-1 General.

1827.304-2 Contracts placed by or for other Government agencies.

1827.304-3 Contracts for construction work or architect-engineer services.

1827.304-4 Subcontracts.

1827.304-5 Appeals.

1827.305 Administration of the patent rights clauses.

1827.305-3 Follow-up by Government.

1827.305-370 NASA patent rights and new technology follow-up procedures.

1827.305-371 New technology reporting plan.

1827.305-4 Conveyance of invention rights acquired by the Government.

##### **Subpart 1827.4—Rights in Data and Copyrights**

1827.404 Basic rights in data clause.

1827.405 Other data rights provisions.

1827.406 Acquisition of data.

1827.406-70 Report of work.

1827.408 Cosponsored research and development activities.

1827.409 Solicitation provisions and contract clauses.

1827.409-70 NASA contract clause.

#### **Subpart 1827.6—Foreign License and Technical Assistance Agreements**

1827.670 Space Station technical data and goods.

1827.670-1 Policy.

1827.670-2 Contract clause.

**Authority:** 42 U.S.C. 2473(c)(1).

#### **1827.000 Scope of part.**

This part prescribes NASA policies, procedures, and clauses pertaining to patents, data, and copyrights. The provisions of FAR Part 27 apply to NASA acquisitions unless specifically excepted in this part.

#### **Subpart 1827.3—Patent Rights Under Government Contracts**

##### **1827.301 Definitions.**

*Administrator*, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

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

*Made*, in lieu of the definition in FAR 27.301, as used in this subpart, means conceived or first actually reduced to practice; provided that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

*Reportable item*, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract.

*Subject invention*, in lieu of the definition in FAR 27.301, as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

##### **1825.302 Policy. (NASA supplements paragraphs (a), (b), (c), (d), (e), (f), (g), and (i)).**

(a) Introduction.

(i) NASA policy with respect to any invention, discovery, improvement, or

innovation made in the performance of work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation to related property rights is based upon Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum or Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(d)(4) of Executive Order 12591. NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. Chapter 18, as amended.

(ii) NASA contracts subject to Section 305 of the Act shall ensure the prompt reporting of reportable items in order to protect the Government's interest and to provide widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) Contractor right to elect title.

(i) For NASA contracts, the contractor right to elect title only applies to contracts with small businesses and non-profit organizations. For other business entities, see subdivision (ii) of this paragraph.

(ii) Contractor right to request a waiver of title. For NASA contracts with other than a small business firm or a nonprofit organization (contracts subject to Section 305 of the Act), it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in FAR 27.302(c) and the march-in rights of FAR 27.302(f) and 1827.302(f)) in and to any subject invention if the Administrator determines that the interests of the United States will be served. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1. Waiver may be requested in advance of contract award for any or all of the subject inventions, or for individually identified subject inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(iii) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) Government license. For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR Section 1245, Subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

(d) Government right to receive title. Under any NASA contract with other than a small business or nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), title to subject inventions vests in NASA when the determinations of Section 305(a)(1) or 305(a)(2) have been made. The Administrator may grant a waiver of title in accordance with 14 CFR Section 1245.

(e) Utilization reports. For any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(f) March-in rights. For any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(g) Preference for United States industry. Waiver of the requirement for the agreement for any NASA contract with other than a small business firm or a nonprofit organization shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(i) Minimum rights to contractor.

(1) For NASA contracts with other than a small business firm or a nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with 14 CFR

1245, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The Administrator is the approval authority for revoking or modifying a license. The procedures for revocation or modification are described in 37 CFR 404.10 and 14 CFR 1245.108.

**1827.303 Contract clauses. (NASA supplements paragraphs (a), (b), (c) and (d))**

(a)1(A) See 1827.303-70(a).

(B) To qualify for the clause at FAR 52.227-11, a prospective contractor may be required to represent itself as either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with FAR 19.302 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as nonprofit organization.

(b)(1)(ii) FAR 52.227-12 is not used in NASA contracts. See instead 1827.303-70(b).

(c)(1)(ii) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, see 1827.303-70(f).

(2) See 1827.303-70 (b) and (f).

(d)(1) When one of the conditions in FAR 27.303(d)(1) (i) through (iv) is met, the contracting officer shall consult with the installation intellectual property counsel to determine the appropriate clause.

**1827.303-70 NASA solicitation provisions and contract clauses.**

(a) When the clause at FAR 52.227-11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227-11.

(b) The contracting officer shall insert the clause at 1852.227-70, New Technology, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 305(a) of the Act), if the contract is to be performed in the United States, its possessions, or Puerto Rico and has

as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in subparagraphs (a) through (e) of this paragraph.

(c) The contracting officer shall insert the provision at 1852.227-71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology (see paragraph (b) of this section).

(d) The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form) or 1852.227-70, New Technology (see paragraph (c) of this section). It may also be inserted, upon consultation with the installation intellectual property counsel, in solicitations and contracts using another patent rights clause. The New Technology Representative shall be the Technology Utilization Officer or the Staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the intellectual property counsel (by titled position) having cognizance of patent matters for the installation concerned.

(e) The contracting officer shall insert the provision at 1852.227-84, Patent

Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

(f) As authorized in FAR 27.303(c)(2), when work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227-85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the installation intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227-13, Patent Rights—Acquisition by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304-4(a) regarding subcontracts with U.S. firms.)

**1827.304 Procedures.**

**1827.304-1 General. (NASA supplements paragraphs (a), (b), (c), (f), (g), and (h))**

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.302-(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization.

(g) *Exercise of march-in rights.* For contracts with other than a small

business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Associate General Counsel (Intellectual Property) (Code GP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227-72 and forwarded, with recommendation, to Code GP for approval.

**1827.304-2 Contracts placed by or for other Government agencies. (NASA supplements paragraph (a))**

(a)(3) When a contract is placed for another agency and the agency does not request the use of a specific patent rights clause, the contracting officer, upon consultation with the installation intellectual property counsel, may use the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form) as modified by 1852.227-11 (see 1827.303-70(a)) or 1852.227-70, New Technology (see 1827.303-70(b)).

**1827.304-3 Contracts for construction work or architect-engineer services. (NASA supplements paragraph (a))**

(a) For construction or architect-engineer services contracts with other than a small business or nonprofit organization, see 1827.303-70(b).

**1827.304-4 Subcontracts. (NASA supplements paragraph (a))**

(a)(i) Unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(A) The clause at 1852.227-70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303-70(b) (1)–(6).

(B) The clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), modified by 1852.227-11 (see 1827.303-70(a)), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(ii) Whenever a prime contractor or a subcontractor considers it inappropriate

to include one of the clauses discussed in paragraph (a) of this section in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the intellectual property counsel.

**1827.304-5 Appeals.**

FAR 27.304-5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

**1827.305 Administration of the patent rights clauses.**

**1827.305-3 Follow-up by Government.**

**1827.305-370 NASA patent rights and new technology follow-up procedures.**

(a) For each contract containing a patent rights clause or the clause at 1852.227-70, New Technology, the contracting officer shall take the following actions:

(1) Furnish, or require the contractor or furnish directly, the New Technology Representative and the Patent Representative a copy of each contract (and modifications thereto), and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the representatives indicate otherwise; and

(2) Notify the New Technology Representative as to which installation organizational element has technical cognizance of the contract.

(b) The New Technology Representative shall take the following actions:

(1) Review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting and recordkeeping requirements;

(2) Forward to the Patent Representative copies of all contractor and subcontractor written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the reports.

(3) Consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract.

(4) Forward to the Patent Representative all correspondence relating to inventions and waivers under the New Technology clause or election of title under the Patent Rights—Retention by the Contractor (Short Form) clause.

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

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the clause at 1852.227-70, New Technology, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications;

(2) Determine inventorship;

(3) Ensure the preparation of instruments establishing the Government's rights' and

(4) Conduct selected reviews to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the clause at 1852.227-70, New Technology. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would constitute a final decision under the Disputes clause, involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245, Subpart 1, or otherwise be outside the scope of the contract.

(e) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the



final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence.

**1827.305-371 New technology reporting plan.**

In contracts with an estimated cost in excess of \$2,500,000 (or less when appropriate) that contain the clause at 1852.227-70, New Technology, the contracting officer may require the contractor to submit for post-award Government approval a detailed plan for new technology reporting that demonstrates an adequate understanding of and commitment to the reporting requirements of the clause.

**1827.305-4 Conveyance of invention rights acquired by the Government. (NASA supplements paragraph (a))**

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

**Subpart 1827.4—Rights in Data and Copyrights**

**1827.404 Basic rights in data clause. (NASA supplements paragraphs (d), (e), (f), (g), (h), and (i))**

(d) *Protection of limited rights data specified for delivery.* The contracting officer shall consult with the installation patent or intellectual property counsel regarding any questions concerning the delivery of limited rights data and/or the use of Alternate II that may arise from an offeror's response to the provision at FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(e) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation patent or intellectual property counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise from an offeror's response to the provision at FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(f) *Copyrighted data.*—(1)(ii) The contracting officer shall consult with the installation patent or intellectual

property counsel before granting permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract.

(iv) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for obtaining a copyright license of a different scope than set forth in subparagraph (c)(1) of the clause at FAR 52.227-14, Rights in Data—General, for any contract or class of contracts.

(2)(i) The procurement officer is the approval authority for obtaining a copyright license of a different scope than that set forth in subparagraph (c)(2) of the clause at FAR 52.227-14 for any contract or class of contracts.

(g) *Release, publication, and use of data.*

(3)(A) NASA's intent is to ensure the most expeditious dissemination of computer software developed by it or its contractor. Accordingly, when the clause at FAR 52.227-14, Rights in Data—General, is modified by 1852.227-14 (see 1827.409(a)), the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission.

(B) The contracting officer may, in consultation with the installation patent or intellectual property counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if:

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

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

(c) The concurrence of the Headquarters Office of Aeronautics Commercial Technology Division (Code RW) is obtained.

(C)(a) The contractor's request for permission in accordance with 1827.404(g)(3)(A) may be made either before contract award or during contract performance.

(b) Any permission granted in accordance with 1827.404(g)(3)(B) (a) or

(b) shall be by express contract provision (or amendment) overriding subparagraph (d)(3) or FAR 52.227-14, Rights in Data—General, (as modified by 1852.227-14), rather than by deleting it. The contract provision may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(c) Any permission granted in accordance with 1827.404(g)(3)(B)(c) may be either by deleting subparagraph (d)(3) or by special contract provision, as appropriate.

(d) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at FAR 52.227-14 and without any obligation of confidentiality on the part of the Government, unless in accordance with 1827.404(g)(3)(B)(b) the contributions of the Contractor may be considered "substantial" for the purposes of FAR 27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(D) If the contractor has not been granted permission to copyright, paragraph (d)(3)(ii) of the clause at FAR 52.227-14, Rights in Data—General (as modified by 1852.227-14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The contracting officer may, in consultation with the installation intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

(h) *Unauthorized marking of data.* The contracting officer shall consult with the installation patent or intellectual property counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data—General.

(i) *Omitted or incorrect notices.* The contracting officer shall consult with the installation patent or intellectual property counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data—General.

**§ 1827.405 Other data rights provisions. (NASA supplements paragraphs (b) and (c))**

(b)(2) *Acquisition of existing computer software.* See 1827.409(k) (i)–(ii) and 1827.409–70 for modifications and alternatives to the clause at 52.227-19.

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

**1827.406 Acquisition of data. (NASA supplements paragraph (a))**

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

**1827.406–70 Reports of work.**

(a) When considered necessary for monitoring contract performance, contracting officers shall require contractors to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) or in cost-reimbursement supply contracts. This purpose may be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(1) *Monthly progress reports.* Reports should be in narrative form, brief, and informal. They should include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of

the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(2) *Quarterly progress reports.* In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(3) *Final report.* This report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(4) *Report Documentation Page.* The contractor should include a completed Report Documentation Page (SF 298) as the final page of each report submitted.

(b) The contracting officer shall consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the contract.

(c) A reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090-2934 (see 1835.070(a)).

**1827.408 Cosponsored research and development activities.**

The contracting officer shall consult with the installation patent or intellectual property counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities.

**1827.409 Solicitation provisions and contract clauses. (NASA supplements paragraph (a), (b), (c), (d), (e), (i), and (k))**

(a) The contracting officer shall add subparagraph (3) set forth in 1852.277-14 to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(b) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for use of Alternate

I. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(c) The contracting officer shall normally add the disclosure purposes listed in FAR 27.404(d)(1) (i)–(v) to subparagraph (g)(2). However, the contracting officer may, upon consultation with the installation patent or intellectual property counsel, make deletions from the specific purposes listed. If all are deleted, the word “None” must be inserted. Additions to those specific purposes listed may be made only with the approval of the procurement officer and concurrence of the installation patent or intellectual property counsel.

(d) The contracting officer shall consult with the installation patent or intellectual property counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III. Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(e) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for the use of Alternate IV in any contract other than a contract for basic or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities).

(i) The contract officer shall modify the clause at FAR 52.227-17, Rights in Data—Special Works by adding paragraph (f) as set forth in 1852.227-17.

(k)(i) The contracting officer shall add paragraph (e) as set forth in 1852.227-19(a) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(ii) The contracting officer shall add paragraph (f) as set forth at 1852.227-19(b) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(iii) See 1827.409-70.

#### **1827.409-70 NASA contract clause.**

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

#### **Subpart 1827.6—Foreign License and Technical Assistance Agreements**

##### **1827.670 Space Station technical data and goods.**

##### **1827.670-1 Policy.**

NASA and its contractors shall comply with all applicable export control laws, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, and the Export Administration Regulations (EAR), 15 CFR Parts 730-799, with respect to the transfer of technical data and goods to any International Space Station program multilateral partner or contractor. When authorized, certain technical data in support of the International Space Station program may be exported to a foreign recipient specified in writing by the contracting officer. Contracting officers, or designees, will assure that any transfer of data to a foreign recipient will be in compliance with all applicable directives, including the NASA Export Control Program.

##### **1827.670-2 Contract clause.**

The contracting officer shall insert the clause at 1852.227-87, Transfer of Technical Data Under Space Station International Agreements, in all solicitations, contracts, and purchase orders in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR Parts 120-130, or the Export Administration Regulations (EAR), 15 CFR Parts 730-799 in accordance with the NASA Export Control Program.

## **PART 1832—CONTRACT FINANCING**

### **1832.409-170 [Amended]**

34-35. In section 1832.409-170, paragraph (5) is redesignated as paragraph (e).

### **1832.412 [Amended]**

36. In paragraph (a)(i) of section 1832.412, the phrase “(either paragraph (d) or (e))” is revised to read “(either paragraph (e) of the basic clause and Alternate II, or paragraph (d) of Alternate V)”.

### **1832.903 [Removed]**

37. Section 1832.903 is removed.

38. In section 1832.908, paragraph (c) is revised to read as follows:

#### **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 1832.970, make the following modifications:

- (i) Insert “17th” in lieu of “30th” in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii); and
- (ii) Annotate the clause “as modified by NASA (DATE)”.

39. Section 1832.970 is revised to read as follows:

#### **1832.970 Payments to Canadian Commercial Corporation.**

Pursuant to the authority of FAR 32.904(a)(3), 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. Accordingly, the phrase “the 17th day” shall be used in lieu of the “the 30th day” at FAR 32.905(a)(1) and 32.906(a).

## **PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

### **1836.213, 1836.213-3, 18213-70, 1836.213-7 [Added]**

40. Sections 1836.213, 1836.213-3, 1836.213-70, and 1836.213-4 are added to read as follows:

#### **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. (NASA supplements paragraph (e))**

(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 1836.3—[Removed]**

41. Subpart 1836.3 is removed.

## **PART 1837—SERVICE CONTRACTING**

### **1837.110-70 [Amended]**

42-43. In paragraph (c) to section 1837.110-70, delete the words “level-of-effort”.

## **PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY**

### **1839.106, 1836.106-70 [Redesignated]**

44. Sections 1839.106 and 1839.106-70 are redesignated as 1839.107 and 1839.107-70, respectively.

## **PART 1842—CONTRACT ADMINISTRATION**

### **1842.7202 [Revised]**

45. Section 1842.7202 is revised to read as follows:

#### **1842.7202 Contract clause.**

The contracting officer shall insert the clause at 1852.242-73, NASA Contractor Financial Management Reporting, in solicitations and contracts when any of the NASA Form 533 series of reports is required from the contractor.

## **PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES**

### **1844.302-70 [Amended]**

46. Paragraph (a) to section 1844.302-70 is revised to read as follows:

#### **1844.302-70 DCMC-conducted contractor purchasing system reviews.**

\* \* \* \* \*

(a) Verifying that CPSRs are being conducted in accordance with FAR 44.302.

\* \* \* \* \*

47. Part 1845 is revised to read as follows:

## **PART 1845—GOVERNMENT PROPERTY**

### **Subpart 1845.1—General**

Sec.

- 1845.102 Policy.
- 1845.102-70 NASA policy.
- 1845.102-71 Solicitation and review procedures.
- 1845.104 Review and correction of contractors' property control systems.
- 1845.106 Government property clauses.
- 1845.106-70 NASA contract clauses and solicitation provision.
- 1845.106-71 Plant reconversion and plant clearance.

### **Subpart 1845.3—Providing Government Property to Contractors**

- 1845.301 Definitions.
- 1845.302 Providing facilities.
- 1845.302-1 Policy.
- 1845.302-2 Facilities contracts.
- 1845.302-70 Securing approval of facilities projects.
- 1845.302-71 Determination and findings.

### **Subpart 1845.4—Contractor Use and Rental of Government Property**

- 1845.402 Authorizing use of Government production and research property.
- 1845.403 Rental—Use and Charges clause.
- 1845.405 Contracts with foreign governments or international organizations.
- 1845.405-70 NASA procedures.
- 1845.406 Use of Government production and research property on independent research and development programs.
- 1845.406-70 NASA policy.
- 1845.407 Non-Government use of plant equipment.

### **Subpart 1845.5—Management of Government Property in the Possession of Contractors**

- 1845.502 Contractor responsibility.
- 1845.502-1 Receipts for Government property.
- 1845.502-70 Contractor-acquired property.
- 1845.505 Records and reports of Government property.
- 1845.505-14 Reports of Government property.
- 1845.508 Physical inventories.

### **Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory**

- 1845.604 Restrictions on purchase or retention of contractor inventory.
- 1845.606 Inventory schedules.
- 1845.606-1 Submission.
- 1845.607 Scrap.
- 1845.607-1 General.
- 1845.607-170 Contractor's approved scrap procedure.
- 1845.607-2 Recovering precious metals.
- 1845.608 Screening of contractor inventory.
- 1845.608-1 General.
- 1845.608-6 Waiver of screening requirements.
- 1845.610 Sale of surplus contractor inventory.

- 1845.610-3 Proceeds of sale.
- 1845.610-4 Contractor inventory in foreign countries.
- 1845.613 Property disposal determinations.
- 1845.615 Accounting for contractor inventory.

### **Subpart 1845.70—[Reserved]**

### **Subpart 1845.71—Forms Preparation**

- 1845.7101 Instructions for preparing NASA Form 1018.
- 1845.7101-1 Property classification.
- 1845.7101-2 Transfers of property.
- 1845.7101-3 Computing costs of fabricated special tooling, special test equipment, agency-peculiar property and contract work in process.
- 1845.7101-4 Types of deletions from contractors property records.
- 1845.7101-5 Contractor's privileged financial and business information.
- 1845.7102 Instructions for preparing DD Form 1419.

### **Subpart 1845.72—Contract Property Management**

- 1845.7201 Definitions.
- 1845.7202 General.
- 1845.7203 Delegations of property administration and plant clearance.
- 1845.7204 Retention of property administration and plant clearance.
- 1845.7205 Functional oversight of property administration and plant clearance.
- 1845.7206 Responsibilities of property administrators and plant clearance officers.
- 1845.7206-1 Property administrators.
- 1845.7206-2 Plant clearance officers.
- 1845.7207 Declaration of excess property.
- 1845.7208 Closure of contracts.
- 1845.7208-1 Completion or termination.
- 1845.7208-2 Final review and closing of contracts.
- 1845.7209 Special subjects.
- 1845.7209-1 Government property at alternate locations of the prime contractor and subcontractor plants.
- 1845.7209-2 Loss, damage, or destruction of Government property.
- 1845.7209-3 Loss, damage, or destruction of Government property while in contractor's possession or control.
- 1845.7209-4 Financial reports.
- 1845.7210 Contractor utilization of Government property.
- 1845.7210-1 Utilization surveys.
- 1845.7210-2 Records of surveys.

Authority: 42 U.S.C. 2473(c)(1).

### **Subpart 1845.1—General**

#### **1845.102 Policy.**

#### **1845.102-70 NASA policy.**

Government property shall not be provided to contractors unless all other alternatives are not feasible. The decision to provide Government property to contractors (whether Government-furnished or contractor-acquired) shall be made only after careful consideration of all relevant factors. Among these factors are the following:

(a) Providing Government property to contractors increases the Government's administrative burden and requires recordkeeping and personnel.

(b) Providing property may dilute the contractor's overall responsibility and weaken guarantees, end-item delivery requirements, and other contract terms.

(c) Providing property may make NASA responsible for delays in that the Agency assumes responsibility for scheduling delivery of the property.

#### **1845.102-71 Solicitation and review procedures.**

(a) Each solicitation, as applicable, shall include the following:

(1) A list of any Government property available to be furnished, quantities, locations, conditions, and any related information.

(2) A requirement that offerors identify any Government property in their possession proposed for use during contract performance. The items, quantities, locations, acquisition costs, and proposed rental terms must be provided, along with identification of the Government contract under which the property is accountable.

(3) A requirement that requested Government provided facilities be described and identified by the classifications in 1845.7101-1.

(4) A requirement that offerors provide, if applicable, the date of the last Government property control system review, a summary of the findings and recommendations, and contractor corrective actions taken.

(b) The contracting officer shall provide a copy of the solicitation (or contract if no solicitation is used) to the center supply and equipment management officer (SEMO) for review for acquisitions with an estimated cost greater than \$1,000,000, or for acquisitions over \$50,000 when work is to be performed at the center, existing Government property is being furnished, or contract acquisition of Government property is required or permitted.

#### **1845.104 Review and correction of contractors' property control systems. (NASA supplements paragraph (a))**

(a) Property administration is normally delegated to DOD. When property administration is not delegated to DOD, NASA shall conduct the review of the contractor's property administration system in accordance with DOD 4161.2-M, Manual for the Performance of Contract Property Administration.

**1845.106 Government property clauses. (NASA supplements paragraph (b))**

(b) If NASA contemplates taking title to contractor acquired property under paragraph (c) of the clause at FAR 52.245-2, Government Property (Fixed-Price Contracts), the contracting officer shall list the applicable property in the contract as deliverable items.

**1845.106-70 NASA contract clauses and solicitation provision.**

(a) The contracting officer shall insert the clause at 1852.245-70, Contractor Requests for Government-Owned Equipment, in all solicitations and contracts that have the potential for contractor acquisition of equipment for the account of the Government that is not listed as a specific contract deliverable. See 1845.7102 for instructions on preparing DD Form 1419.

(b)(1) The contracting officer shall insert the clause at 1852.245-71, Installation-Accountable Government Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or directly leased by NASA when the contractor does not have authority to acquire property for the account of the Government.

(2) Use of this clause is subject to the SEMO's concurrence that adequate installation property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify in the contract the nature, quantity, and acquisition cost of such property and make the property available on a no-charge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) Contracting officers shall list separately in the contract any property provided under a FAR 52.245 Government property clause that remains accountable to the contractor during its use on the contract (such as property used at the contractor's or a subcontractor's off-site facility) and which is not also subject to the clause at 1852.245-71. The contracting officer

shall address any specific maintenance considerations (e.g., requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(6) See 1845.106-70(e).

(c) The contracting officer shall insert the clause at 1852.245-72, Liability for Government Property Furnished for Repair and Services, in fixed-price solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement contracts unless all property to be provided is subject to the clause at 1852.245-71, Installation-Accountable Government Property. The clause shall also be included in other types of contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) When approved by the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG), the contracting officer shall insert the clause at 1852.245-74, Contractor Accountable On-Site Government Property, in lieu of the clause at 1852.245-71, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer's written request for approval shall include a determination of costs that will be (1) avoided (e.g., additional costs to the installation's property management systems and staffing) and (2) incurred (e.g., reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245-75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245-2 with its Alternate II or 52.245-5, with its Alternate I is used.

(g) The contracting officer shall insert the clause at 1852.245-76, List of

Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245-77, List of Installation-Accountable Property and Services, in solicitations and contracts that require performance at the center and authorize contractor use of property within the physical borders of the center.

(1) The contracting officer shall insert the provision at 1852.245-79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(j) The contracting officer shall insert the clause at 1852.245-80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when government property (real property, commercially available equipment, special test equipment, or special tooling) accountable under another contract(s) is authorized for use.

**1845.106-71 Plant reconversion and plant clearance.**

The Associate Administrator for Procurement (Code HS) is the approval authority for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion plant clearance until after award.

**Subpart 1845.3—Providing Government Property to Contractors****1845.301 Definitions.**

*Facilities*, as defined in the FAR, also include real property and commercially available equipment, whether owned or leased by NASA or reimbursed as a cost under the contract.

*Provide*, as used in this subpart in such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to permit to be acquired, as in "contractor-acquired property." See FAR 45.101 for definitions of "contractor-acquired property" and "Government-furnished property."

**1845.302 Providing facilities.****1845.302-1 Policy. (NASA supplements paragraph (a))**

(a) In addition to the exceptions listed in FAR 45.302-1(a), existing NASA-owned facilities (whether contractor acquired or government furnished) being used by a contractor may be retained for the remainder of the contract period and furnished under any

follow-on contract for the same effort if the contracting officer determines that to do so would be in the best interest of the Government, provided that:

- (i) The facilities are required to accomplish the purpose of the contract;
- (ii) The contract contains a provision requiring the contractor to replace any of the facilities that reach the end of their useful life during the contract period, or which are beyond economical repair, if the facilities are still needed for contract performance. Such replacements shall be made with contractor-owned facilities. The contract provision shall also expressly prohibit contractor acquisitions of facility items for the Government, unless specifically authorized by the contract or consent has been obtained in writing from the contracting officer pursuant to FAR 45.302-1(a);
- (iii) Consideration has been given to any alternative uses by Government personnel within the agency, in consultation with the center industrial property officer; and
- (iv) The contracting officer documents the file with a detailed explanation of why continued furnishing of the facilities is in the best interest of the Government.

(a)(4)(A) The procurement officer is designated to make the determinations and findings (D&F) authorizing the use of Government facilities. See 1845.302-71 for D&F format.

(B) The requirements for a D&F and a prospective contractor's written statement asserting inability to obtain facilities are not applicable in the circumstances listed under FAR 45.302-1(d). In these cases, the contracting officer shall document the contract file with the rationale for providing the facilities, including the reason for not requiring the contractor to provide them.

#### **1845.302-2 Facilities contracts.**

Unless termination would be detrimental to the Government's interests, contracting officers shall terminate facilities contracts when the Government property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

#### **1845.302-70 Securing approval of facilities projects.**

(a) Pursuant to NMI 7330.1, Delegation of Authority—Approval Authorities for Facility Projects, the

contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer's written authorization is required before any change is made in the scope or estimated cost of any facilities project.

#### **1845.302-71 Determination and findings.**

(a) Procedure. Determination and findings (D&F) required under FAR 45.302-1(a)(4) and 1845.302-1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval, concurrence must be obtained from the SEMO to ensure agreement on the use of the government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity or before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows: National Aeronautics and Space Administration, Washington, DC 20546  
Determination and Findings

#### **Decision To Provide Government Facilities**

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302-1(a)(4).

#### **Findings**

1. The [insert the name of the contracting activity] and the contractor (have entered)/ (proposed to enter) into Contract No. [Insert the contract number]. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the

Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Describe the types of facilities to be provided and any variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under \$10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

#### **Determination**

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer \_\_\_\_\_

Date \_\_\_\_\_

#### **Subpart 1845.4—Contractor Use and Rental of Government Property**

#### **1845.402 Authorizing use of Government production and research property. (NASA supplements paragraph (a))**

(a)(i) A NASA contracting officer desiring to authorize use of Government property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence.

(ii) NASA contracting officers having cognizance over NASA property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

#### **1845.403 Rental—Use and Charges clause. (NASA supplements paragraph (a))**

(a) The Center Director is designated as the authority to make the determinations on modified rental rates.

#### **1845.405 Contracts with foreign governments or international organizations.**

#### **1845.405-70 NASA procedures.**

(a) NASA policy is to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

(b) The prior written approval of the Associate Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign

countries or for international organizations. The Logistics Management Office of the Headquarters Offices of Management Systems and Facilities (Code JLG), the Office of General Counsel (Code G), and the International Planning and Programs Branch of the Headquarters Office of External Relations (Code IRD) are required concurrences.

(c) Contracting officers shall forward requests for approval to Code HS, along with a summary of the circumstances involved, including as a minimum—

- (1) The name of the requesting contractor;
- (2) The number of the contract under which the equipment is controlled;
- (3) A description of the equipment;
- (4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;
- (5) A description of the articles to be manufactured or services to be performed;
- (6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the equipment beyond the expected expiration or completion date of the NASA contract;
- (7) A statement that the use of Government property is consistent with the best interests of the United States;
- (8) A statement that such use is legally authorized; and
- (9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States.

(d) Use, if approved, shall be subject to rent in accordance with FAR 45.403.

**1845.407 Use of Government production and research property on independent research and development programs.**

**1845.406–70 NASA policy.**

The contracting officer should not authorize contractor use of Government property for independent research and development on a rent-free basis except in unusual circumstances when it has been determined by the contracting officer that—

- (a) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and
- (b) No competitive advantage will accrue to the contractor through such use (see FAR 45.201).

**1845.406 Non-Government use of plant equipment. (NASA supplements paragraph (a)).**

For NASA, the coverage in FAR 45.407, applies to all equipment, not just plant equipment.

(a)(i) The Associate Administrator for Procurement (Code HS) is the approval authority for non-Government use of equipment exceeding 25 percent.

(ii) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All equipment having a unit acquisition cost of less than \$25,000 at any single location may be averaged over a quarterly period. Equipment having a unit acquisition cost of \$25,000 or more shall be considered on an item-by-item basis.

(iii) Approval for non-Government use of less than 25 percent shall be for a period not exceeding 1 year. Approval for non-Government use in excess of 25 percent shall not be for less than 3 months.

(iv) Requests for the approval shall be submitted to Code HS at least 6 weeks in advance of the projected use and shall include—

(A) The number of equipment items involved and their total acquisition cost; and

(B) An itemized listing of equipment having an acquisition cost of \$25,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

**Subpart 1845.5—Management of Government Property in the Possession of Contractors**

**1845.502 Contractor responsibility.**

**1845.502–1 Receipts for Government property.**

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, NASA Property in the Custody of Contractors (see 1845.7101).

**1845.502–70 Contractor-acquired property.**

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

- (a) Facilities.
  - (1) Prior contracting officer approval, if the facilities are not already specifically described in the contract as contractor-acquired.
  - (2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or

equivalent format, and return of Certificate of Nonavailability.

(3) Submission of the written statement prescribed by FAR 45.302–1(a)(4).

(b) Special test equipment.

(1) Contracting officer approval 30 days in advance if the equipment is not identified in the solicitation or contract.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

(c) Special tooling.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability.

(d) Material. If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(e) Agency-peculiar property.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

**1845.505 Records and reports of Government property.**

**1845.505–14 Reports of Government property. (NASA supplements paragraphs (b))**

(b) When the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, is included in the contract, the contractor shall submit NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form and 1845.71. Contractor property control systems shall distinguish between Government furnished and contractor acquired property for purposes of reporting the acquisition cost in the property classifications shown in FAR 45.505–14(a) (1) through (5).

**1845.508 Physical inventories.**

NASA contractors shall reconcile inventories with the official property records and submit reports to the property administrator within 30 days



after inventory completion. The contractor shall investigate all losses of property and discoveries of unrecorded property to determine the causes of the discrepancy and actions needed to prevent its recurrence.

#### **Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory**

##### **1845.604 Restrictions on purchase or retention of contractor inventory.**

(1) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(2)(i) The contractor's or subcontractor's authority to approve the sale, purchase, or retention of Government property on a contract which is excess to needs after Government reutilization screening at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain such property at less than cost with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(A) A sale by a subcontractor to the contractor, the next higher-tier subcontractor, or their affiliates; or

(B) A sale, purchase, or retention by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(ii) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

##### **1845.606 Inventory schedules.**

##### **1845.606–1 Submission.**

See 1845.608 for intra-agency screening of excess contractor-held property.

##### **1845.607 Scrap.**

##### **1845.607–1 General.**

##### **1845.607–170 Contractor's approved scrap procedure.**

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.

(b) The center property administrator is authorized to approve the contractor's scrap procedure. Before approval, the plant clearance officer shall review the procedure, particularly regarding sales. The plant clearance officer shall ensure that the procedure contains adequate requirements for inspecting and examining items to be disposed of as scrap. When the contractor's procedure does not require physical segregation of

Government-owned scrap from contractor-owned scrap and separate disposal, care shall be exercised to ensure that a contract change that generates a large quantity of property does not result in an inequitable return to the Government. In such a case, the property administrator shall make a determination as to whether separate disposition of Government scrap would be appropriate.

(c) A plant clearance case shall not be established for property disposed of through the contractor's approved scrap procedure.

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and 1845.

##### **1845.607–2 Recovering precious metals. (NASA supplements paragraph (b)).**

(b) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS–R, Federal Center, Battle Creek, MI 49017–3092, for instructions regarding disposition.

##### **1845.608 Screening of contractor inventory.**

##### **1845.608–1 General. (NASA supplements paragraphs (a))**

(a) Property Disposal Officers (PDOs) are the center focal points for intra-agency reutilization screening. PDOs shall acknowledge receipt of inventory schedules within 30 days and simultaneously provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NHB 4300.1.

##### **1845.608–6 Waiver of screening requirements.**

The Director of the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG) is designated to authorize exceptions to intra-agency screening requirements.

##### **1845.610 Sale of surplus contractor inventory.**

##### **1845.610–3 Proceeds of sale.**

The plant clearance officer shall maintain an open suspense record until verifying that credit has been applied, unless another Government representative has specifically assumed this responsibility.

##### **1845.610–4 Contractor inventory in foreign countries.**

NASA procedures for disposal are in NHB 4300.1.

##### **1845.613 Property disposal determinations.**

The center property disposal officer (PDO) shall review the determinations in accordance with NHB 4300.1.

##### **1845.615 Accounting for contractor inventory.**

A copy of Standard Form 1424, Inventory Disposal Report, shall be provided to the center industrial property officer or the PDO.

#### **Subpart 1845.70—[Reserved]**

#### **Subpart 1845.71—Forms Preparation**

##### **1845.7101 Instructions for preparing NASA Form 1018.**

NASA Form 1018 (see 1853.3) provides information for NASA financial statements and property management. Accuracy and timeliness of the report are, therefore, very important. Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and reporting requirements are set forth in this subpart.

##### **1845.7101–1 Property classification.**

(a) Contractors shall report costs in the classifications required on NF 1018, as described in this section. For Land, Buildings, Other Structures and Facilities, and Leasehold Improvements, contractors shall report the amount for all items with a unit cost of \$5,000 or more and a useful life of 2 years or more. For Plant Equipment, Special Tooling, Special Test Equipment and Agency-Peculiar Property, contractors shall separately report:

(1) the amount for all items with a unit cost of \$5,000 or more and a useful life of 2 years or more, and

(2) all items under \$5,000, regardless of useful life.

(b) Contractors shall report the amount for all Materials, regardless of unit costs.

(c) *Land.* Includes costs of land, improvements to land, and associated costs incidental to acquiring and preparing land for use. (for example; appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of a land purchase, removal or destruction of structures or facilities purchased but not used, and legal expenses).

(d) *Buildings*. Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for the functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(e) *Other structures and facilities*. Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements, such as sidewalks, parking areas, and fences.

(f) *Leasehold improvements*. Includes costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract.

(g) *Equipment*. Includes cost of commercially available personal property for use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, accessory or auxiliary items, and test equipment).

(h) *Construction in Progress*. Includes costs for work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title.

(i) *Special Tooling*. Includes costs of equipment and manufacturing aids (and components and replacements of these items) that are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts, or to the performance of particular services. Examples include jigs, dies, fixtures, molds, patterns, taps and gauges.

(j) *Special Test Equipment*. Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment.

(k) *Material*. Includes costs of NASA owned property held in inventory that may become a part of an end item or be expended in performing a contract.

Examples include raw and processed material, parts, assemblies, small tools and supplies. Does not include material that is part of work in process.

(l) *Agency-Peculiar Property*. Includes actual or estimated costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.

(m) *Contract Work-in-Process*. Includes the costs of all work-in-process and excludes the costs of completed items reported in other categories.

#### **1845.7101-2 Transfers of property.**

A transfer is a change in accountability between and among prime contracts, centers, and other Government agencies (e.g., between contracts of the same installation, contracts of different installation, a contract of one installation to that of another installation, an installation to a contract of another installation, and a contract to another Government agency or its contract). So that NASA may properly control and account for transfers, they shall be adequately documented. Therefore, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed in all cases, to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received.

Repairables provided under fixed price repair contracts that include the clause at 1852.245-72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided or conduct repairs are reportable, regardless of contract type.

(a) *Approval and Notification*. The contractor must obtain the approval of

the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded, unit prices, and any other appropriate identifying or descriptive data. Unit prices shall be obtained from records maintained pursuant to FAR part 45 and 1845. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA center responsible for their respective contracts when accountability for Government property is transferred to, or received from, other contracts, contractors, NASA centers or Government agencies. Copies of shipping or receiving documents will suffice as notification in most instances.

(b) *Reclassification*. If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation*. If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505-2.

#### **1845.7101-3 Computing costs of fabricated special tooling, special test equipment, agency-peculiar property and contract work in process**

(a) Costs of fabricated special tooling, special test equipment, agency-peculiar property and contract work in process shall be computed in accordance with accepted accounting principles, be reasonably accurate, and be the product of any one or a combination of, the following:

- (1) Abstracts of cost data from contractor property or financial records.
- (2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50 percent factor for work in process items, on the basis of updated Standard Form 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(b) Contractors shall report costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and shall include all direct and indirect costs of fabricating Government property.

(c) The contractor shall redetermine the costs of items returned for modification or rehabilitation.

(d) The computation of work in process shall include the costs of associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials that have been issued from inventory.

#### **1845.7101-4 Type of deletions from contractor property records.**

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Adjusted.* Changes in the deletion amounts, if any, that result from mathematical errors in the previous report.

(b) *Lost, Damaged or Destroyed.* Deletion amounts as a result of relief from responsibility under FAR 45.503 granted during the reporting period.

(c) *Transferred in Place.* Deletion amounts that result from a transfer of property to a follow-up contract with same contractor.

(d) *Transferred to Center Accountability.* Deletion amounts that result from transfer of accountability to the center responsible for the contract, whether or not the items are physically moved.

(e) *Transferred to Another NASA Center.* Deletion amounts caused by transfer of accountability to a center other than the one responsible for the contract, whether or not the items are physically moved.

(f) *Transferred to Another Government Agency.* Deletion amounts that result from transfer of property to another Government agency.

(g) *Purchased at Cost/Returned for Credit.* Deletion amounts due to contractor purchase or retention of contractor acquired property as provided in FAR 45.605-1; or to contractor returns to suppliers under FAR 45.605-2.

(h) *Disposal Through Plant Clearance Process.* Deletions other than transfers; e.g., donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

#### **1845.7101-5 Contractor's privileged financial and business information.**

If a transfer of property between contractors will involve disclosing costs of a proprietary nature, the contractor shall furnish unit prices only on those copies of the shipping documents that are sent to the shipping and receiving NASA installations. Transfer of the property to the receiving contractor shall be on a no-cost basis.

#### **1845.7102 Instructions for preparing DD Form 1419.**

(a) The contractor shall enter the essential information covering Sections I and II before submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the Industrial Property Officer (IPO). The IPO shall review each submission for completeness and authenticity. Incomplete or invalid requests shall be returned for correction.

(b) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA within 30 days after allocation. A copy of the DD Form 1419, or equivalent format, will serve as the clearance document to inspect the equipment at the storage site. Note acceptance or rejection of the item, without inspection or after inspection in Section VI. If the item is acceptable, execute Section VII. Cite the NASA appropriation symbol where applicable in Section VII.

(c) The IPO shall assign a requisition number to each DD Form 1419, or equivalent format request.

(d) Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year. For example, April 15, 1997, would be written as 7095 (April 15 being the 95th day of the year). The last entry will be a four-digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example, the ninth requisition prepared on April 15, 1997, would be 7095-0009, preceded by the FEDSTRIP/MILSTRIP Activity Address Code. When submitting subsequent DD Forms 1419, or equivalent format, related to

the item requested, the IPO shall use the same requisition number and add the alpha code to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

(e) Detailed directions for completing the DD Form 1419 follow. The contractor may elect to provide the required data in an equivalent format, which complies with these directions. Section I

**Item Description.** To ensure adequate screening, the item description must be complete. For single-purpose equipment or general-purpose equipment with special features, requests must contain detailed descriptive data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

**Block 1.** Not applicable.

**Block 2.** Enter the manufacturer's name and Federal Supply Code for manufacturer (Cataloging Handbook H4-1) of the item requested.

**Block 3.** Enter the manufacturer's model style, or catalog number assigned to the equipment being requisitioned. Always use the model number, if available. The style number is the next preference. Enter "None" in this block if the model, style or catalog number is not known.

**Block 4.** Enter the first four digits of the National Stock Number, if known.

**Block 5.** Not applicable.

**Block 6.** Self-explanatory.

**Block 7.** Place an "X" in the applicable block to indicate whether you desire to physically inspect the item before acceptance.

**Block 8.** Self-explanatory.

**Block 9.** Enter the complete description of the item. Continue the description in Block 53 if additional space is needed.

#### **Section II**

**Block 10.** Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature will be referred. Specify the telephone number of an individual who will respond to inquiries concerning the request.

**Block 11.** Enter the contract number or document number authorizing acquisition of the items shown in Section I. This normally will be a facility contract number. Otherwise, it should be a purchase order or procurement request number.

**Block 12.** Self-explanatory.

**Block 13.** Not applicable.

**Block 14.** Disregard the "Military" block. Show the NASA contract number and program for which the item is to be used.

**Block 15.** Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities,

specifications, etc., that the equipment must satisfy.

**Block 16.** Determine the date the item must be installed to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

**Block 17.** Enter the date by which NASA must issue a Certificate of Nonavailability. Determine the date by subtracting the acquisition lead time and 30 days administrative lead time from the date shown in Block 16.

**Block 18.** Enter the Defense Priority and Allocations System (DPAS) rating assigned to the contract or anticipated purchase order, if applicable.

**Block 19.** Place an "X" in the appropriate box. If for replacement, identify the item being replaced and the reason for replacement.

**Block 20.** Place an "X" in the appropriate box. Show the appropriate symbol if the answer is "yes."

**Block 21.** Not applicable.

**Blocks 22 and 23.** In addition to the official's title and signature, type the signing official's name, office symbol or name, and telephone number plus extension. The company representative who prepares and submits the requirement to the cognizant NASA certifying office should sign.

**Block 24.** Self-explanatory.

**Block 25a.** Not applicable.

**Block 25b.** Enter the name and address of the installation certifying the requirement.

**Block 25c.** This block is for signature of the property administrator or contracting officer at plant level.

**Block 25d.** Self-explanatory.

**Block 25e.** This block is for the signature of NASA installation official certifying the requirement.

**Block 25f.** Self-explanatory.

### Section III

**Blocks 26–29.** Self-explanatory.

### Section IV

N/A

### Section V

Complete this section if equipment is unavailable.

### Section VI

**Blocks 44–47.** The requesting official signing Section II, Block 23, shall complete Section VI and shall list reasons for non-acceptance in Section VIII, Remarks, or on a separate document attached to the DD Form 1419.

### Section VII

**Block 48.** Enter the complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate railroad and truck delivery points when other than the address named.

**Blocks 49 and 50.** Self-explanatory.

**Blocks 51 a. and b.** Ensure that NASA appropriation symbols are included with the work order number.

**Block 51c.** Enter the NASA appropriation symbol chargeable for any special work ordered (e.g., rebuild, repair, or accessory replacement).

**Block 51d.** Enter the NASA installation and office symbol for the organization that will make payment for transportation and packing, crating, and handling.

**Block 52.** Self-explanatory.

### Section VIII

**Block 53.** This block can be used to expand or explain entries made in Blocks 1 through 52. When requisitioning equipment from excess listings, identify the issuing office, list number, date, control number, and item number assigned to the equipment. When requesting equipment from DOD inventories, refer to DOD instructions.

## Subpart 1845.72—Contract Property Management

### 1845.7201 Definitions.

**Supporting responsibility**, as used in this subpart, relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

**Property control system**, as used in this subpart, identifies a contractor's internal management program encompassing the protection of, preservation of, accounting for, and control of property from its acquisition through disposition.

### 1845.7202 General.

This subpart describes major elements of the NASA Contract Property Management Program. It provides guidance to NASA installation personnel responsible for NASA contract property (NASA personal property in the possession of contractors). It applies to all NASA installation personnel charged with this responsibility, including industrial property officers and specialists, property administrators, and plant clearance officers. It also provides detailed procedures for property administration. The NASA Contract Property Management Program includes the following three major elements:

- (a) Performance of property administration and plant clearance by DOD under delegations from NASA, pursuant to 1842.101.
- (b) Performance of property administration and plant clearance by NASA under certain situations, pursuant to 1842.203.
- (c) Maintenance of property administration and plant clearance functional oversight, regardless of delegations.

### 1845.7203 Delegations of property administration and plant clearance.

When delegated to DOD, property administration and plant clearance are

performed in accordance with DOD's regulations and procedures, as amended by the NASA Letter of Contract Administration Delegation, Special Instructions on Property Administration and Plant Clearance. These Special Instructions are developed by the Headquarters Office of Management Systems and Facilities Logistics Management Office (Code JLG), and are available from that office upon request. The contracting officer shall issue the Special Instructions with delegations whenever Government property will be involved. Additional or more tailored property instructions are not proscribed but must be coordinated with Code JLG before issuance.

### 1845.7204 Retention of property administration and plant clearance.

NASA may occasionally retain the property administration and plant clearance function, such as for contract work performed at the installation awarding the contract and not subject to the clause at 1852.245–71, Installation-Accountable Government Property. In these cases, property administration shall be performed in accordance with 1845.3 through 1845.6, and plant clearance shall be performed in accordance with FAR Subpart 45.6 and 1845.6. Under the clause at 1852.245–71, property administration and plant clearance are neither delegated nor retained; they are simply not required because the property is treated as installation rather than contract property.

### 1845.7205 Functional oversight of property administration and plant clearance.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency in no way relieves NASA contracting officers of their ultimate responsibility for the proper and effective management of contracts. The functional management responsibility for contract property is described in this section. Beyond individual contracting officers, each NASA installation has designated an industrial property officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, and delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire contract property management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are:

(a) Provide a focal point for all management of contract property, including Government property (Government-furnished and contractor-acquired) provided to universities as well as to industry.

(b) Provide guidance to contracting and other personnel on the NASA property provisions.

(c) To the extent feasible, review property provisions of acquisition plans, solicitations, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure that vesting-of-title determinations are made and documented pursuant to FAR 35.014(b).

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries for all contracts for which property administration has been delegated. Advise Code JLG of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Review and analyze NASA Form 1018, NASA Property in the Custody of Contractors.

(h) Negotiate, or ensure the negotiation of, facilities contracts when required by FAR 45.302 and 1845.302. Advise Code JLG annually of new and completed facilities contracts.

(i) Review property administrators' approvals of relief of responsibility for lost, damaged, and destroyed property and question any excessive or repetitive approvals.

(j) When appropriate, make recommendations to source and performance evaluation boards regarding property management and award fee criteria and evaluations regarding property management.

(k) Monitor plant clearance status to preclude delays in contract closeout.

(l) Maintain contract property files for all transactions and correspondence associated with each contract. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract and forward for inclusion with the official completed file.

(m) Perform on-site property administration and plant clearance when they are not delegated to DOD and the property is not subject to the clause at 1852.245-71.

#### **1845.7206 Responsibilities of property administrators and plant clearance officers.**

##### **1845.7206-1 Property administrators.**

(a) When property administration is not delegated to DOD, the property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. The property administrator's responsibilities include—

(1) Developing and applying a system survey program for each contractor under the property administrator's cognizance;

(2) Evaluating the contractor's property control system and approving or recommending disapproval;

(3) Advising the contracting officer of any (i) contractor noncompliance with approved procedures and (ii) other significant problems the property administrator cannot resolve, and recommending appropriate action, which may include disapproval of the contractor's property control system;

(4) Resolving property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Headquarters Office of the Inspector General, the Defense Contract Audit Agency (DCAA), and other Government agencies; and

(5) Recognizing the functions of other Government personnel having cognizance of Government property and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) The participation of property administrators (or other Government industrial property personnel) in pre-award surveys/post-award orientations is required whenever significant amounts of Government property will be involved, in order to reveal and resolve property management problems early in the acquisition cycle.

##### **1845.7206-2 Plant clearance officers.**

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal;

(h) Determining the method of disposal;

(i) Surveillance of any contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales;

(n) Securing antitrust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

#### **1845.7207 Declaration of excess property.**

A problem often disclosed by system analysis is the failure of a contractor to report Government property not needed in performance of the contract (excess). The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall ensure prompt disposition. For centrally reportable plant equipment, the property administrator shall—

(a) Assure the preparation and submission of individual reports required of the contractor;

(b) Verify the permit certifications required by the forms; and

(c) Transmit the report to the NASA Industrial Property Officer.

**1845.7208 Closure of contracts.****1845.7208-1 Completion or termination.**

Upon completion or termination of a contract, the property administrator shall—

(a) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(b) Advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

**1845.7208-2 Final review and closing of contracts.**

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review and sign a determination that—

(1) Disposition of Government property has been properly accomplished and documented;

(2) Adjustment documents, including any request of the contractor for relief from responsibility, have been processed to completion;

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(4) All questions regarding title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(5) The contract property control record file is complete and ready for retirement.

(b) When final review pursuant to paragraph (a) of this section reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, Contract Administration Completion Record, or equivalent.

(c) The executed DD Form 1593 shall be forwarded to the contracting officer, the Property Summary Data Record shall be so annotated, and the contracting officer shall include it in the contract file.

**1845.7209 Special subjects.****1845.7209-1 Government property at alternate locations of the prime contractor and subcontractor plants.**

(a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for this property.

(b) A Government property administrator cognizant of the location

of the property shall normally be designated to (1) perform required surveys of the property control system and (2) exercise surveillance over the property as a supporting responsibility.

(c) If the property administrator determines that supporting property administration is required, he or she shall write the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include—

(1) The name and address of the prime contractor;

(2) The prime contract number;

(3) The name and address of the alternate location of the prime contractor, or of the subcontractor where the property will be located;

(4) A listing of the property being furnished, or, if property is being acquired locally, a statement to this effect; and

(5) A copy of the subcontract or other document under which the property will be furnished or acquired.

(d) Concurrent with the action cited in paragraph (c) of this section, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with the contractor's own personnel, or elect to rely upon the system approval and continuing surveillance by a supporting property administrator of the property control system at the alternate location or subcontractor plant. If the prime contractor advises that it will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, it will be required to perform the requisite reviews and surveillance and document its actions and findings.

(e) If a single item or limited quantities of property will be located at an alternate location or subcontractor plant, the property administrator may determine that supporting property administration is unnecessary, provided—

(1) The prime contractor's records adequately reflect the location and use of the property;

(2) The nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(3) The nature of the property is such that a program of preventive maintenance is not required.

(f) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an

occasional basis of special reviews or such other support as may be necessary. Repeated requests for assistance indicate a requirement for requesting supporting property administration.

**1845.7209-2 Loss, damage, or destruction of Government property.**

(a) Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described by the following:

(1) Sealed-bid and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract (see the clause at FAR 52.245-2, Government Property (Fixed-Price Contracts)).

(2) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract, with the exceptions set forth in the clause at FAR 52.245-2, Alternate I and Alternate II.

(3) Cost-reimbursement contracts (see the clause at FAR 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)) provide that the Government assumes the risk for all Government property provided under the contract when there is no willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined in the contract.

(4) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks the contractor expressly requires the contractor to insure against. Therefore, before reaching a conclusion or making a determination, the contracting officer shall obtain property administrator review of the contract clause and shall obtain advice from appropriate legal counsel on questions of legal meaning or intent.

(5) "Willful misconduct" may involve any intentional or deliberate act or failure to act causing, or resulting in, loss, damage, or destruction of Government property.

(6) "Lack of good faith" may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or the contracting officer's authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued by authorized Government personnel.

(b) If part of the contractor's system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, or destruction of Government property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reinstatement of approval.

**1845.7209-3 Loss, damage, or destruction of Government property while in contractor's possession or control.**

(a) The property administrator shall require the contractor to report any loss, damage, or destruction of Government property in its possession or control (including property in the possession or control of subcontractors) as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of Government property considered unreasonable by the property administrator or loss, damage, or destruction of Government property not reported by the contractor, the property administrator shall prepare a statement of the items and amount involved. This statement shall be furnished to the contractor for investigation and submission of a written report to the property administrator relative to the incidents reported.

(c) The contractor's reports referenced in paragraphs (a) and (b) of this section shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

- (1) The contractor's name and the contract number;
- (2) A description of items lost, damaged, destroyed, or unreasonably consumed;
- (3) The cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damage (in event actual cost is not known, use a reasonable estimate);
- (4) The date, time (if pertinent), and cause or origin of the loss, damage, destruction, or consumption;
- (5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;
- (6) Insurance, if any, covering the Government property or any part or interest in any commingled property;
- (7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable

consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determining liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to the contractor's liability for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, industrial specialist, insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. If analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes a risk assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor is liable for the loss, damage, destruction, or unreasonable consumption of Government property, he or she shall forward the complete file with conclusions and recommendations to the contracting officer for review and determination. The file shall contain—

- (i) A statement of facts as supported by investigation;
  - (ii) Recommendations as to the contractor's liability and its amount;
  - (iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;
  - (iv) Requirements for disposition, repair, or replacement of damaged property; and
  - (v) Other pertinent comments.
- (2) A copy of the contracting officer's determination shall be furnished to the contractor and the property administrator, and a copy shall be retained in the contracting officer's files. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

**1845.7209-4 Financial reports.**

The property administrator is responsible for obtaining financial reports as prescribed in 1845.505-14 for all assigned contracts. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (see 1852.245-73) except as noted in 1845.7101-4(c).

**1845.7210 Contractor utilization of Government property.**

**1845.7210-1 Utilization surveys.**

(a) The property administrator is responsible for ensuring that the contractor has effective procedures for evaluating Government property utilization. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of these procedures.

(b) Upon assignment of an initial contract under which Government-owned plant equipment in particular will be provided to a contractor, the property administrator shall ensure that the contractor has established effective procedures and techniques for controlling its utilization. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate these procedures. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. If the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) The property administrator shall perform annual surveys of the contractor's procedures related to utilization of Government-owned plant equipment. At contractor facilities having a substantial quantity of plant equipment, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Surveys shall be conducted to the degree determined necessary, considering the findings of prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to justify, by specific Government programs, the retention of all Government-owned plant equipment. The property



administrator shall make maximum use of contractor's machine loading data, order boards, production planning records, machine time records, and other production control methods.

(d) The property administrator shall conduct a special survey when a significant change occurs in the contractor's production schedules, such as a termination, completion of a contract, or a major adjustment in a program. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, the contractor shall identify and report Government-owned plant equipment in accordance with FAR 45.502(g) and 45.509-2(b)(4). Items that are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contracting officer shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

#### 1845.7210-2 Records of surveys.

The property administrator shall prepare a record incorporating written findings, conclusions, and recommendations at the conclusion of each survey. If appropriate, the property administrator's record may be limited to a statement expressing concurrence with the reports of other specialists. The property administrator shall retain one copy of each record in the property administration file.

### PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 1852.204-76 [Amended]

48-49. In the introductory text to section 1852.204-76, the citation "1804.470-3" is revised to read "1804.470-4".

#### 1852.216-76 [Amended]

50. In the introductory text to section 1852.216-76, the citation "1816.405-70(a)" is revised to read "1816.406-70(a)".

51. In the asterisked brackets within the clause to section 1852.216-76, the citation "1816.404-272(a)" is revised to read "1816.405-272(a)".

52. In the introductory text of ALTERNATE I to the clause to section 1852.216-76, the citation "1816.405-70(a)" is revised to read "1816.406-70(a)".

#### 1852.216-77 [Amended]

53. In the introductory text to section 1852.216-77, the citation "1816.405-70(b)" is revised to read "1816.406-70(b)".

54. In the asterisked brackets within the clause to section 1852.216-77, the citation "1816.404-272(a)" is revised to read "1816.405-272(a)".

#### 1852.216-83 [Amended]

55. In the introductory text to section 1852.216-83, the citation "1816.405-70(c)" is revised to read "1816.406-70(c)".

#### 1852.216-84 [Amended]

56. In the introductory text to section 1852.216-84, the citation "1816.405-70(d)" is revised to read "1816.406-70(d)".

#### 1852.216-85 [Amended]

57. In the introductory text to section 1852.216-85, the citation "1816.405-70(e)" is revised to read "1816.406-70(e)".

#### 1852.216-88 [Amended]

58. In the introductory text to section 1852.216-88, the citation "1816.405-70(f)" is revised to read "1816.406-70(f)".

59. Section 1852.216-89 is revised to read as follows:

#### 1855.216-89 Assignment and Release Forms.

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

##### Assignment and Release Forms

(Date of Publication)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216-7, Allowable Cost and Payment, and FAR clause 52.216-13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release;  
NASA Form 779, Assignee's Release;  
NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and  
NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

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

(End of clause)

60. Sections 1852.219-73, 1852.219-75, 1852.219-76, and 1852.219-77 are revised to read as follows:

#### 1852.219-73 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.

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

##### Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan

(Date of Publication)

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

(b) The contract expected to result from this solicitation will contain FAR clause

52.219-9, "Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan." The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

\* \* \* \* \*

#### 1852.219-75 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Reporting.

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

##### Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Reporting

(Date of Publication)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.

(b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219-9.

(End of clause)

#### 1852.219-76 NASA 8 Percent Goal.

As prescribed in 1819.7003 insert the following clause:

##### NASA 8 Percent Goal

(Date of Publication)

(a) Definitions.

*Historically Black Colleges or University*, as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institutions*, as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

*Small disadvantaged business concern*, as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has

its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

*Women-owned small business concern*, as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

#### **1852.219-77 NASA Mentor-Protégé Program.**

As prescribed in 1819.7219(a), insert the following clause:

##### **NASA Mentor-Protégé Program**

(Date of Publication)

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

(b) The pilot Program consists of:

(1) Mentor firms, which are large prime contractors with at least one active subcontracting plan or eligible small businesses;

(2) Protégés, which are subcontractors to the prime contractor, include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(3) Mentor-protégé agreements, approved by the NASA Office of Small and Disadvantaged Business Utilization (OSDBU);

(4) Potential for payment of additional award fee for voluntary participation and successful performance in the Mentor-Protégé Program.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

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

(End of clause)

#### **1852.219-78 [Removed]**

61. Section 1852.219-78 is removed.

62. Section 1852.219-79 is revised to read as follows:

#### **1852.219-79 Mentor Requirements and Evaluation.**

As prescribed in 1819.7219(b), insert the following clause:

##### **Mentor Requirements and Evaluation**

(Date of Publication)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(b) NASA will evaluate the contractor's performance through the Performance Evaluation process. The evaluation will consider the following:

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

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

(3) To what extent the protégé has met the developmental objectives in the agreement; and

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

(c) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protégé program manager, NASA Headquarters OSDBU, to include information as outlined in paragraph (b).

(d) The mentor will notify the OSDBU and the contracting officer, in writing, as least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) Mentor and protégé firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the pilot Program period or the conclusion of their effort whichever comes first. At the conclusion of each year in the Mentor-

Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments as pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements and exclude mentor or protégé firms from participating in the NASA program if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h). (End of clause)

#### **1852.222-70 [Removed]**

63. Section 1852.222-70 is removed.

#### **1852.225-71 [Amended]**

64. In the introductory text to section 1852.225-71, the citation "1825.205-70" is revised to read "1825.207-70".

#### **1852.227-11 [Amended]**

65. In the introductory text to section 1852.227-11, the citation "1827.373(a)" is revised to read "1827.303-70(a)".

#### **1852.227-14 [Amended]**

66. In the introductory text to section 1852.227-14, the citation "1827.409(e)" is revised to read "1827.409(a)".

#### **1852.227-17 [Amended]**

67. In the introductory text to section 1852.227-17, the citation "1827.405(c)" is revised to read "1827.409(i)".

#### **1852.227-19 [Amended]**

68. In paragraph (a) to section 1852.227-19, the citation "1827.409(f)" is revised to read "1827.409(k)(i)".

69. In paragraph (b) to section 1852.227-19, the citation "1827.409(g)" is revised to read "1827.409(k)(ii)".

#### **1852.227-70 [Amended]**

70. In the introductory text to section 1852.227-70, the citation "1827.373(b)" is revised to read "1827.303-70(b)".

#### **1852.227-71 [Amended]**

71. In the introductory text to section 1852.227-71, the citation "1827.373(d)" is revised to read "1827.303-70(c)".

#### **1852.227-72 [Amended]**

72. In the introductory text to section 1852.227-72, the citation "1827.373(e)" is revised to read "1827.303-70(d)".

73. In section 1852.227-72, the date of the clause "(APR 1984)" is revised to read "(Insert date of publication), and in

paragraph (b) of the clause, the citation "1827.375-3" is revised to read 1827.305-370".

**1852.227-84 [Amended]**

74. In the introductory text to section 1852.227-84, the citation "1827.373(f)" is revised to read "1827.303-70(e)".

**1852.227-85 [Amended]**

75. In the introductory text to section "1852.227-85, the citation "1827.373(c)(1)" is revised to read "1827.303-70(f)".

**1852.227-86 [Amended]**

76. In the introductory text to section 1852.227-86, the citation "1827.409(h)" is revised to read "1827.409-70".

**1852.239-70 [Amended]**

77. In the introductory text to section 1852.239-70, the citation "1836.106(a)(1)" is revised to read "1839.106-70(a)(1)".

**1852.242-70 [Amended]**

78. In the introductory text to section 1852.242-70, the citation "1842.7001" is revised to read "1842.271".

**1852.242-72 [Amended]**

79-80. In the introductory text to section 1852.242-72, the citation "1842.7003(a)" is revised to read "1842.7001(a)".

81. In the introductory text to ALTERNATE I within the clause to section 1852.242-72, the citation "1842.7003(b)" is revised to read "1842.7001(b)".

82. In the introductory text to ALTERNATE II within the clause to section 1852.242-72, the citation "1842.7003(c)" is revised to read "1842.7001(c)".

83. Section 1852.242-73 is revised to read as follows:

**1852.242-73 NASA Contractor Financial Management Reporting.**

As prescribed in 1842.7202, insert the following clause:

**NASA Contractor Financial Management Reporting**

(Date of Publication)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Policy Guidance (NPG) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give

due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

**1852.242-74 [Removed]**

84. Section 1852.242-74 is removed.

85. Alternate I within the clause of section 1852.243-70 is revised to read as follows:

**1852.243-70 Engineering change proposals.**

\* \* \* \* \*

**Alternate I**

(Date of Publication)

As prescribed in 1843.205-70(b), add the following paragraph (f), modified to suit contract type, to the basic clause:

(f) If the \_\_\_\_ [price or estimated cost] adjustment proposed for any contractor-originated ECP is \_\_\_\_ [insert a percent or dollar amount of the contract price or estimated cost] or less, the ECP shall be executed with no adjustment to the contract \_\_\_\_ [price or estimated cost].

86. Sections 1852.245-70, 1852.245-71, 1852.245-77, and 1852.245-79 are revised to read as follows:

**1852.245-70 Contractor Requests for Government-Owned Equipment.**

As prescribed in 1845.106-70(a), insert the following clause:

**Contractor Requests for Government-Owned Equipment**

(Date of Publication)

(a) "Equipment," as used in this clause, means commercially available items capable of stand-alone use, including those to be acquired for incorporation into special test equipment or special tooling.

(b)(1) Upon determination of need for any Government-owned equipment item for performance of this contract, the contractor

shall provide to the contracting officer a written request justifying the need for the equipment and the reasons why contractor-owned property cannot be used, citing the applicable FAR or contract authority for use of Government-owned equipment.

Equipment being acquired as a deliverable end item listed in the contract or as a component for incorporation into a deliverable end item listed in the contract is exempt from this requirement.

(2) The contractor's request shall include a description of the item in sufficient detail to enable the Government to screen its inventories for available equipment or to purchase equipment. For this purpose, the contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, or equivalent format, for each item requested and (ii) forward it through the contracting officer to the Industrial Property Officer at the cognizant NASA installation at least 30 days in advance of the date the contractor intends to acquire the item. Multiple units of identical items may be requested on a single form. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7102. If a certificate of nonavailability is not received within that period, the contractor may proceed to acquire the item, subject to having obtained contracting officer consent, if required, and having complied with any other applicable provisions of this contract.

(c) Contractors who are authorized to conduct their own screening using the NASA Equipment Management System (NEMS) and other Government sources of excess property shall provide the evidence of screening results with their request for contracting officer consent. Requests to purchase based on unsuitability of items found shall include rationale for the determined unsuitability.

(End of clause)

**1852.245-71 Installation-Accountable Government Property.**

As prescribed in 1845.106-70(b), insert the following clause:

**Installation-Accountable Government Property**

(Date of Publication)

(a) The Government property described in the clause at 1852.245-77, List of Installation-Provided Property and Services, shall be made available to the contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property. Under this clause, the Government retains accountability for, and title to, the property, and the contractor assumes the following user responsibilities: [Insert contractor user responsibilities].

The contractor shall establish and adhere to a system of written procedures for compliance with these user responsibilities. Such procedures must include holding employees liable, when appropriate, for loss, damage, or destruction of Government property.

(b)(1) The official accountable recordkeeping, physical inventory, financial

control, and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area;

(ii) The contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area;

(iii) The contractor shall establish a record of the property as required by FAR 45.5 and 1845.5 and furnish to the Industrial Property Officer a DD Form 1149 Requisition and Invoice/Shipping Document (or installation equivalent) to transfer accountability to the Government within 5 working days after receipt of the property by the contractor. The contractor is accountable for all contractor-acquired property until the property is transferred to the Government's accountability.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use require advance approval of the contracting officer and notification of the SEMO. The contractor shall assume accountability and financial reporting responsibility for such property. The contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR Part 45.5 until its return to the installation.

(2) After transfer of accountability to the Government, the contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the contracting officer.

(End of clause)

#### Alternate I

(March 1989)

As prescribed in 1845.106-70(b)(2), insert the following as subparagraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

\* \* \* \* \*

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

As prescribed in 1845.106-70(h), insert the following clause:

#### List of Installation-Accountable Property and Services

(Date of Publication)

In accordance with the clause at 1852.245-71, Installation-Accountable Government Property, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, in the performance of this contract within the physical borders of the installation which may include buildings and space owned or directly leased by NASA in close proximity to the installation, if so designated by the Contracting Officer.

(a) Office space, work area space, and utilities. Government telephones are available for official purposes only; pay telephones are available for contractor employees for unofficial calls.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available is listed in Attachment \_\_\_\_ [Insert attachment number or "not applicable" if no equipment is provided]. The Government retains accountability for this property under the clause at 1852.245-71, Installation-Accountable Government Property, regardless of its authorized location.

(2) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records as required by the clause at 1852.245-71, Installation-Accountable Government Property.

(3) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: \_\_\_\_ [Insert the name of the facilities or "None"]

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The user responsibilities of the Contractor are defined in paragraph (a) of the clause at 1852.245-71, Installation-Accountable Government Property.

(End of clause)

#### 1852.245-79 Use of Government-Owned Property.

As prescribed in 1845.106-70(j), insert the following provision:

#### Use of Government-Owned Property

(Date of Publication)

(a) The offeror ( ) does, ( ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), and NASA FAR Supplement (NFS) 1845.102-71:

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245-9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

(b) The offeror ( ) does, ( ) does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement of its inability to obtain facilities as prescribed by FAR 45.302-1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) of this provision), the offer must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5 and 1845.71.

(3) A statement indicating whether or not the costs associated with paragraph (c)(2) of this provision, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

87. Part 1853 is revised to read as follows:

**PART 1853—FORMS****Subpart 1853.1—General**

Sec.

- 1853.100 Scope of subpart.
- 1853.101 Requirements for use of forms.
- 1853.103 Exceptions.
- 1853.105 Computer generation.
- 1853.107 Obtaining forms.
- 1853.108 Recommendations concerning forms.

**Subpart 1853.2—Prescription of Forms**

- 1853.200 Scope of subpart.
- 1853.204 Administrative matters.
- 1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533Q, 1098, 1356, 1611, 1612, and Department of Defense Form 1593).
- 1853.208 Required sources of supplies and services.
- 1853.208–70 Other Government sources (Standard Form 1080, Air Force Form 858, Department of Energy Form 5400.3, Nuclear Regulatory Commission Form 313).
- 1853.215 Contracting by negotiation.
- 1853.215–2 Price negotiation (NASA Form 634 and Department of Defense Form 1861).
- 1853.216 Types of contracts.
- 1853.216–70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, and 781).
- 1853.217 Special contracting methods (NASA Form 523).
- 1853.232 Contract financing (Standard Forms 272, 272A).
- 1853.242 Contract administration.
- 1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).
- 1853.242–71 Notifications (NASA Form 456).
- 1853.245 Property (NASA Form 1018, Department of Defense Form 1419).
- 1853.246 Quality assurance (Department of Defense Forms 250 and 250c).
- 1853.249 Termination of contracts (NASA Forms 1412, 1413).

**Subpart 1853.3—Illustrations of Forms**

- 1853.300 Scope of subpart.
  - 1853.301 Standard forms.
  - 1853.303 Agency forms.
- Authority:** 42 U.S.C. 2473(c)(1).

**Subpart 1853.1—General****1853.100 Scope of subpart.**

This subpart contains information regarding the forms prescribed in this Regulation. Unless specified otherwise, the policies in FAR Part 53 apply to NASA-prescribed forms.

**1853.101 Requirements for use of forms.**

The requirements for use of the forms in this part are contained in Parts 1801 through 1852 where the subject matter applicable to each form is addressed. The specific location of each form's prescription is identified in subpart 1853.2.

**1853.103 Exceptions.**

(1) Requests for exceptions to standard or optional forms shall be forwarded through the center forms manager to the Headquarters Office of Procurement (Code HK).

(2) Alteration of any form in this part is prohibited unless prior approval has been obtained from the Headquarters Office of Management Systems and Facilities, Information Resources Management Division (Code JT). Requests for alteration shall be coordinated with the center forms manager before transmittal to Code JT.

(3) Use for the same purpose of any form other than one prescribed by this Regulation requires prior approval of Code HK.

**1853.105 Computer generation.**

Forms prescribed by this Regulation may be adapted for computer preparation providing there is no change to the name, content, or sequence of the data elements, and the form carries the form number and edition date.

**1853.107 Obtaining forms. (NASA supplements paragraph (c))**

(c)(i) NASA centers and offices may obtain forms prescribed in the FAR or in this Regulation from Goddard Space Flight Center, Code 239. Orders should be placed on a NASA Form 2, Request for Blank Forms, Publications and Issuances.

(ii) Contracting officers, at the time of contract award, shall ensure that contractors are notified of the procedures for obtaining NASA forms required for performance under the contract.

**1853.108 Recommendations concerning forms.**

Code HK is the office responsible for submitting form recommendations.

**Subpart 1853.2—Prescription of Forms****1853.200 Scope of subpart.**

This subpart summarizes the prescriptions of NASA forms and other forms adopted by NASA for use in acquisition.

**1853.204 Administrative matters.**

**1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533Q, 1098, 1356, 1611, 1612 and Department of Defense Form 1593).**

(a) The following forms are prescribed in 1804.670–3:

(1) NASA Form 507, Individual Procurement Action Report (New Awards).

(2) NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.

(3) NASA Form 507B, Individual Procurement Action Report Supplement B.

(4) NASA Form 507G, Individual Procurement Action Report (Grants/Orders).

(5) NASA Form 507M, Individual Procurement Action Report (Modifications).

(b) *NASA Form 531, Name Check Request.* Prescribed in 1852.204–76.

(c) The following forms are prescribed in 1842.72:

(1) NASA Form 533M, Monthly Contractor Financial Management Report.

(2) NASA Form 533Q, Quarterly Contractor Financial Management Report.

(d) *NASA Form 1098, Checklist for Contract Award File Content.* Prescribed in 1804.803–70.

(e) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* Prescribed in 1804.671.

(f) *NASA Form 1611, Contract Completion Statement.* Prescribed in 1804.804–2 and 1804.804–5.

(g) The following forms are prescribed in 1804.804–5:

(1) NASA Form 1612, Contract Closeout Checklist.

(2) DD Form 1593, Contract Administration Completion Record.

**1853.208 Required sources of supplies and services.**

**1853.208–70 Other Government sources (Standard Form 1080, Air Force Form 858, Department of Energy Form 5400.3, Nuclear Regulatory Commission Form 313).**

(a) *SF 1080, Voucher for Transfers Between Appropriations and/or Funds (Disbursement).* Prescribed in 1808.002–72(e).

(b) *Air Force Form 858, Forecast of Requirements (Missile Propellants and Pressurants).* Prescribed in 1808.002–72(f).

(c) *Department of Energy Form 5400.3, Isotope Order Blank.* Prescribed in 1808.002–70(a).

(d) *Nuclear Regulatory Commission Form 313, Application for Material License.* Prescribed in 1808.002–70(a).

**1853.215 Contracting by negotiation.**

**1853.215–2 Price negotiation (NASA Form 634 and Department of Defense Form 1861).**

(a) *NASA Form 634, Structured Approach—Profit/Fee Objective.* Prescribed in 1815.970–1(a).

(b) *DD Form 1861, Contract Facilities Capital Cost of Money.* Prescribed in 1830.70, and instructions for completion are in 1830.7001–2.

**1853.216 Types of contracts.**

**1853.216-70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, and 781).**

The following forms are prescribed in 1852.216-89:

(a) NASA Form 778, Contractor's Release.

(b) NASA Form 779, Assignee's Release.

(c) NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

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

**1853.217 Special contracting methods (NASA Forms 523).**

*NASA Form 523, NASA-Defense Purchase Request.* Prescribed in 1808.002-72(b) and 1817.7002.

**1853.232 Contract financing (Standard Forms 272, 272A).**

The following forms are prescribed in 1832.412(a)(ii):

(a) SF 272, Federal Cash Transactions Report.

(b) SF 272A, Federal Cash Transactions Report Continuation.

**1853.242 Contract administration.**

**1853.242-70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).**

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* Prescribed in 1842.202(d)(ii).

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* Prescribed in 1842.202(d)(ii).

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* Prescribed in 1842.202(d)(iii).

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* Prescribed in 1842.202(b)(1)(G).

(e) *NASA Form 1433, Letter of Audit Delegation.* Prescribed in 1842.202(d)(iv).

(f) *NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation.* Prescribed in 1842.270(b).

(g) *NASA Form 1434, Letter of Request for Pricing-Audit Technical Evaluation Services.* Prescribed in 1815.805-5(a)(1)(E).

**1853.242-71 Notifications (NASA Form 456).**

*NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved.* Prescribed in 1842.803(b)(2).

**1853.245 Property (NASA Form 1018, Department of Defense Form 1419).**

(a) *NASA Form 1018, NASA Property in the Custody of Contractors.*

Prescribed in 1845.505-14. Instructions for form completion are in 1845.7101.

(b) DD Form 1419, DOD Industrial Plant Equipment Requisition. Prescribed in 1852.245-70. Instructions for form completion are in 1845.7102.

**1853.246 Quality assurance (Department of Defense Forms 250 and 250c).**

The following forms are prescribed in 1846.670. Instructions for form completion are in 1846.670:

(a) DD Form 250, Material Inspection and Receiving Report

(b) DD Form 250c, Material Inspection and Receiving Report-Continuation Sheet.

**1853.249 Termination of contracts (NASA Forms 1412, 1413).**

(a) *NASA Form 1412, Termination Authority.* Prescribed in 1849.101-71.

(b) *NASA Form 1413, Termination Docket Checklist.* Prescribed in 1849.105-70.

**Subpart 1853.3—Illustrations of Forms****1853.300 Scope of subpart.**

This subpart contains illustrations of NASA forms and others forms used by NASA in acquisitions and not prescribed in the FAR.

**1853.301 Standard forms.**

This section illustrates standard forms (SFs) specified for use in acquisitions.

**1853.303 Agency forms.**

This section illustrates NASA and other agency forms specified for use in acquisitions. The other agency forms are arranged numerically by agency following the NASA forms.

**PART 1870—NASA SUPPLEMENTARY REGULATIONS****Part 1870 [Removed]**

88. Part 1870, NASA Supplementary Regulations, is removed.

[FR Doc. 97-17310 Filed 7-8-97; 8:45 am]

BILLING CODE 7510-01-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 960805216-7111-06; I.D. 063097C]

**Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Massachusetts**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota harvest.

**SUMMARY:** NMFS announces that the scup commercial quota for the 1997 Summer period (May 1, 1997 - October 31, 1997) available to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the scup fishery may not land scup in Massachusetts for the remainder of the 1997 Summer period, unless additional quota becomes available through a transfer. Regulations governing the scup fishery require publication of this notification to advise the Commonwealth of Massachusetts that the quota allocated for the 1997 Summer period has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing scup in Massachusetts for the remainder of the 1997 Summer period. **DATES:** Effective 0001 hrs, local time (l.t.) July 2, 1997, through 2400 hrs, l.t., October 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lucy Helvenston, 508-281-9347.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the scup fishery are found at 50 CFR part 648. Section 648.120(d) requires annual specification of a commercial quota that is allocated into two Winter periods: January-April (Winter I) and November-December (Winter II); and one Summer period: May-October (Summer) (62 FR 27978, May 22, 1997). The Winter periods are allocated coastwide among the states from Maine to North Carolina and the Summer period is allocated on a state-by-state basis from Maine to North Carolina. The process to set the annual commercial quota and the percent allocated to each state for the Summer period are described in § 648.120.

The total commercial quota for scup for the 1997 Summer period is 2,337,000 lb (1,060,045 kg) (62 FR 27978, May 22, 1997). The percent of the Summer period quota allocated to vessels landing scup in Massachusetts is