

resolve mutual exclusivity before December 15, 1995, will be processed, provided the applications had completed the 60-day public notice period on or before November 13, 1995. Another main point of the decision is that the Commission will process those amendments of right filed on or after November 13, 1995, but before December 15, 1995. Further, it will continue to hold in abeyance all pending mutually exclusive applications, unless the mutual exclusivity was resolved by an amendment of right filed before December 15, 1995. In addition, the *Memorandum Opinion and Order* states that applications to modify existing 39 GHz licenses and amendments thereto would be processed regardless of when filed, provided they neither enlarge the service area nor change the assigned frequency blocks (except to delete them). These applications and amendments will be processed and granted, if otherwise in compliance with the Commission's Rules.

#### Ordering Clauses

6. Accordingly, it is hereby ordered that the Petition for Reconsideration submitted by Commco, LLC., PLAINCOM, INC., and Sintra Capital Corporation, and the Petition for Partial Reconsideration filed by DCT Communications, Inc., are hereby granted in part and denied in part.

7. It is further ordered that the Emergency Petition for Stay filed by Commco, L.L.C., PLAINCOM, INC., and Sintra Capital Corporation is hereby dismissed as moot.

8. This action is taken pursuant to the authority found in Sections 4 (i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and 303, and Section 0.131 of the Commission's Rules, 47 CFR 0.131. For further information, contact Susan Magnotti, Private Wireless Division, (202) 418-0871.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1803, 1805, 1812, 1815, 1835, 1842, 1843, 1844, 1846, 1847, 1848, 1849, 1850, 1851, and 1852**

### Rewrite of the NASA FAR Supplement (NFS)

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

**ACTION:** Final rule.

**SUMMARY:** Parts 1842 through 1851, except 1845, and clauses affected by these parts are revised in their entirety. Part 1815, Contracting by Negotiation, is revised by relocating the existing coverage on source selection evaluation plans from 1815.612-70(g) to a new separately titled section 1815.605-71, and by establishing a new section 1815.612, Formal source selection. The revision to part 1842 also incorporates the changes published as a proposed rule (61 FR 55264-55266, October 25, 1996). No public comments were received in response to the proposed rule, and the proposed changes are adopted as final except for the deletion of extraneous paragraph 1842.7201(d). Also included in this final rule are editorial changes to 1803 and 1815; a revision to 1805.402 to reflect the prohibition in FAR 15.1005(f) on preaward disclosure of the identity of offerors; a change to 1812 to authorize use of an NFS contract clause in commercial acquisitions; and the adoption as final rule the proposed changes to 1852.223-70 and 1852.247-73 described in the proposed rule to eliminate non-statutory contractor certification requirements (61 FR 66643-66646).

**EFFECTIVE DATE:** March 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Tom O'Toole, (202) 358-0478.

#### 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. 602 *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, 1805, 1812, 1815, 1835, 1842, 1843, 1844, 1846, 1847, 1848, 1849, 1850, 1851, and 1852**

Government procurement.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1803, 1805, 1812, 1815, 1835, 1842, 1843, 1844, 1846, 1847, 1848, 1849, 1850, 1851, and 1852 are amended as follows:

1. The authority citation for 48 CFR 1803, 1805, 1812, 1815, 1835, 1842, 1843, 1844, 1846, 1847, 1849, 1850, 1851, and 1852 continues to read as follows:

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

## PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### 1803.101-1 [Amended]

2. The first sentence in section 1803.101-1 is revised to read as follows:

#### 1803.101-1 General.

The statutory prohibitions and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, 5 CFR part 6901. \* \* \*

### 1803.101-2 [Amended]

3. In section 1803.101-2, the phrase "(See Standards of Conduct for NASA Employees, NHB 1900.1.)" is removed.

### 1803.104-5 [Amended]

4. In paragraph (d)(1)(A) of section 1803.104-5, the phrase "under 1870.303, App. I," is revised to read "(see 1815.612-70)".

## PART 1805—PUBLICIZING CONTRACT ACTIONS

### 1805.402 [Amended]

5. Section 1805.402 is revised to read as follows:

#### 1805.402 General public. (NASA paragraphs (1) and (2))

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, the following information on NASA acquisitions may be released:

(i) The names of firms invited to submit offers, and

(iii) The names of firms that attended any pre-bid or pre-proposal conferences.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

## **PART 1812—ACQUISITION OF COMMERCIAL ITEMS**

### **1812.301 [Amended]**

6. In section 1812.301, a new paragraph (f)(i)(J) is added to read as follows:

**1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items. (NASA Supplement paragraph (f))**

(f)(i) \* \* \*

(J) 1852.246–72, Material Inspection and Receiving Report. \* \* \*

## **PART 1815—CONTRACTING BY NEGOTIATION**

### **1815.605–71 [Added]**

7. Section 1815.605–71 is added to read as follows:

#### **1815.605–71 Source selection evaluation plan.**

(a) A source selection evaluation plan shall be prepared for each source selection. The plan shall include, as a minimum the general and specific evaluation guidelines (and special standards of responsibility, where applicable) established to assess each offeror's proposal against the RFP evaluation factors, subfactors, and elements. The evaluation guidelines are designed to focus the evaluators' assessment. They are not weighted and are not listed in the RFP. However, the substance of the guidelines may be included in a narrative description of the subfactors and elements. In addition, the plan includes the system used in conducting the evaluation (and scoring, if applicable) of each offeror's proposal.

(b) The source selection evaluation plan shall be approved by the source selection authority or other personnel designated in accordance with installation procedures before the formal RFP is issued.

(c) For formal source selections, see 1815.612(c).

### **1815.612 [Added]**

8. Section 1815.612 is added to read as follows:

#### **1815.612 Formal source selection. (NASA supplements paragraph (c))**

(c) The requirement for a source selection evaluation plan may be satisfied by incorporating the information required by 1815.605–71

into the source selection plan. The consolidated plan shall be approved by the source selection authority.

### **1815.612–70 [Amended]**

9. In section 1815.612–70, the designated paragraph (g) is removed, and the designated paragraphs (h) through (k) are redesignated as paragraphs (g) through (j).

## **PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING**

### **1835.016–70 [Amended]**

10. In paragraph (b)(2) of section 1835.016–70, the citation “1815.201” is revised to read “1805.201”.

11. Part 1842 is revised to read as follows:

## **PART 1842—CONTRACT ADMINISTRATION**

### **Subpart 1842.1—Interagency Contract Administration and Audit Services**

1842.101 Policy.

1842.102 Procedures.

1842.102–70 Review of administration and audit services.

1842.170 Assignment of NASA personnel at contractor plants.

### **Subpart 1842.2—Assignment of Contract Administration**

1842.202 Assignment of contract administration.

1842.203 Retention of contract administration.

1842.270 Contracting officer technical representative (COTR) delegations.

1842.271 NASA clause.

### **Subpart 1842.5—Postaward Orientation**

1842.503 Postaward conferences.

### **Subpart 1842.7—Indirect Cost Rates**

1842.705 Final indirect cost rates.

1842.705–1 Contracting officer determination procedure.

1842.708 Quick-closeout procedure.

1842.708–70 NASA quick-closeout procedure.

### **Subpart 1842.8—Disallowance of Costs**

1842.803 Disallowing costs after incurrence.

### **Subpart 1842.12—Novation and Change-of-Name Agreements**

1842.1203 Processing agreements.

1842.1203–70 DOD processing of novation and change-of-name agreements on behalf of NASA.

### **Subpart 1842.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work**

1842.1305 Contract clauses.

### **Subpart 1842.14—Traffic and Transportation Management**

1842.1405 Discrepancies incident to shipment of supplies.

### **Subpart 1842.70—Additional NASA Contract Clauses**

1842.7001 Observance of legal holidays.

1842.7002 Travel outside of the United States.

### **Subpart 1842.71—Submission of Vouchers**

1842.7101 Submission of vouchers.

### **Subpart 1842.72—NASA Contractor Financial Management Reporting**

1842.7201 General.

1842.7202 Contract clause.

### **Subpart 1842.73—Audit Tracking and Resolution**

1842.7301 NASA external audit follow-up system.

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

## **Subpart 1842.1—Interagency Contract Administration and Audit Services**

### **1842.101 Policy. (NASA supplements paragraph (a))**

(a)(i) The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. 88, those with Canadian contractors, and those for which NASA will perform audits.

(ii) Cross-servicing arrangements are the responsibility of the Headquarters Office of External Relations (Code ID). Contracting officers should direct questions to the Headquarters Office of Procurement (Code HS).

### **1842.102 Procedures.**

#### **1842.102–70 Review of administration and audit services.**

(a) NASA installations shall assess their delegations to DOD semiannually to determine changes in delegation patterns that could (1) result in significant changes in DOD manpower requirements or (2) have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizable new acquisitions should be considered in the assessment.

(b) A summary of significant changes shall be submitted to the Headquarters Office of Procurement (Code HK). The summary shall include—

(1) A description of the change in work requirements or delegation pattern;

(2) The estimated duration of the impact;

(3) The results of discussions with affected DOD contract administration offices including agreement and disagreements on the predicted impact on DOD in terms of changes in manpower requirements or other costs; and

(4) Any other significant impact on DOD or NASA resources or contract performance risk.

**1842.170 Assignment of NASA personnel at contractor plants.**

(a)(1) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval with the concurrence of the Associate Administrator for Procurement (Code HS). The following supporting information shall be forwarded with the request to make the assignment:

(i) A statement of the special circumstances that necessitate the assignment.

(ii) The contract administration serves to be performed.

(iii) A summary of any discussions held with the cognizant contract administration organization.

(iv) A staffing plan covering three years or such shorter period as may be appropriate.

(2) The provisions of this paragraph (a) do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel.

(c) When a NASA resident office, including any assigned technical personnel, and a DOD contract administration office are performing contract administration functions for

NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel will be involved in any aspect of contract administration.

**Subpart 1842.2—Assignment of Contract Administration**

**1842.202 Assignment of contract administration. (NASA supplements paragraphs (b) and (d))**

(b) Withholding normal functions. (1) The following functions are normally retained by the contracting office.

(A) Approval of the final voucher (FAR 42.302(a)(7)).

(B) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(C) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(D) Contract payment (FAR 42.302(a)(13)).

(E) Execution of supplement agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(F) Executive of supplemental agreements definitizing change orders (see FAR 42.302(b)(1)).

(G) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted using NASA Form 1432 (FAR 42.302(a)(23)).

(H) Consent to placement of subcontracts under FAR 42.302(a)(51). (See 1844.202-1(a)).

(d) Transmittal and documentation. In addition to the instructions at FAR 42.202(d) (1) through (4), contracting officers shall—

(i) Send delegations to DOD contract administration offices in accordance

with the instructions in the DOD Directory of Contract Administration Services Components (DLAH 4105.4).

(ii) At time of contract award, prepared and forward NASA Form 1430, Letter of Contract Administration Delegation, General, to the contract administration office. NASA Form 1430A, Letter of Contract Administration, Special Instructions, will supplement the NASA Form 1430, to modify previously delegated functions and provide additional or particular information considered necessary to ensure clear understanding of all delegated functions.

(iii) Forward NASA Form 1431, Letter of Acceptance of Contract Administration, with each NASA Form 1430 or 1430A. Contracting officers shall use the returned NASA Form 1431 as contract file documentation that the delegation has been accepted, modified or rejected by the contract administration office and as a reference for points of contract for each of the functional areas delegated.

(iv) Use NASA Form 1433, Letter of Audit Delegation, to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(A) *Audit office*: One copy of the contract and three NASA Forms 1433. When the Department of Health and Human Services is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(B) *Contractor*: One NASA Form 1433.

(C) *Cognizant NASA fiscal or financial management office*: One NASA Form 1433.

(v) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(vi) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are

furnished directly to the contracting officer.

**1842.203 Retention of contract administration. (NASA supplements paragraph (a))**

(a) The assignment of contract administration is optional for the following contracts:

- (i) Research and development study contracts not involving deliverable hardware or Government furnished property.
- (ii) Contracts with delivery schedules for 90 days or less.
- (iii) Purchase orders without Government source inspection requirements.
- (iv) Contracts requiring only on-site performance.
- (v) Contracts requiring work in the vicinity of the awarding center where DOD contract administration services are not reasonably available.

**1842.270 Contracting officer technical representative (COTR) delegations.**

(a) Contracting officers may appoint a qualified Government employee to act as their technical representatives in managing the technical aspects of a particular contract. If necessary, the contracting officer may appoint an alternate COTR to act during short absences of the COTR. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses training, qualifications and experience commensurate with the duties and responsibilities to be delegated and the nature of the contract.

(b) NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to appoint COTRs. A COTR's duties and responsibilities may not be redelegated by the COTR and the COTR may be held personally liable for unauthorized acts. However, this does not prohibit the COTR from receiving assistance for the purpose of monitoring contractor progress and gathering information. When an individual is appointed as a COTR on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 will be used to appoint an alternate COTR.

(c) A COTR delegation remains in effect throughout the life of the contract unless canceled in writing by the cognizant contracting officer or at any level above that contracting officer. The contracting officer may modify the delegation only by issuance of a new delegation canceling and superseding the existing delegation.

(d) A COTR shall not be authorized to initiate procurement actions or in any

way cause a change to the contract or increase the Government's financial obligations. However, delegations may be made to construction contract COTRs to sign emergency on-site change orders with an estimated value not to exceed the value specified in writing by the contracting officer in the NASA Form 1634 but in no event to exceed \$25,000.

(e) Each COTR shall acknowledge receipt and accept the delegation by signing the original delegation letter. The original of the COTR delegation letter shall be filed in the applicable contract file. Copies of the signed COTR delegation letter shall be distributed to the COTR, the contractor, and each cognizant contract administration office. Acknowledgment and distribution for terminations of COTR delegations and COTR delegations which revise authority, duties and responsibilities shall follow the same rules.

(f) Mandatory training for COTRs and their alternates shall include the following core topic areas: contracting authority; procurement integrity; performance-based contracting; contract modifications; surveillance plans; contracting for inherently governmental functions, personal services, and NASA policy on the acquisition of services; the Service Contract Act; the Anti-Deficiency Act; contract financial management; the "Changes" clause; the "Disputes" clause; the "Inspection" clause; Government property and policy procedures; and the "Limitation of Funds" and "Limitation of Cost" clauses. Procurement officers are responsible for assuring that the course(s) utilized by their installation address the mandatory core topics in sufficient detail for the purpose of COTR training.

(g) The contracting officer shall verify that the COTR has received the mandatory training before signing NASA Form 1634. If an urgent need arises for the appointment of a COTR and no trained and otherwise qualified individual is available, then the procurement officer may make a temporary COTR appointment not to exceed six months. Temporary appointments must be so identified and clearly reflect the appointment expiration date.

(h) No technical direction may be issued by a COTR relative to performance-based contract requirements or when serving under a temporary appointment.

**1842.271 NASA clause.**

Insert the clause at 1852.242-70, Technical Direction, when paragraph 3(m) of the NASA Form 1634

specifically authorizes a COTR to issue technical direction.

**Subpart 1842.5—Postaward Orientation**

**1842.503 Postaward conferences. (NASA paragraphs (1) and (2))**

(1) A postaward conference shall be held with representatives of the contract administration office when—

- (i) A contract is expected to exceed \$10,000,000;
- (ii) Contract performance is required at or near a NASA installation or NASA-controlled launch site;
- (iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation; or
- (iv) Complex contract management problems are expected.

(2) Procurement officer approval is required to waive a post-award planning conference for contracts meeting any of the criteria in paragraph (1) of this section. The request for procurement officer approval to waive a post-award conference shall address action taken and planned to ensure effective communication with the contract administration office during the performance of the contract.

**Subpart 1842.7—Indirect Cost Rates**

**1842.705 Final indirect cost rates.**

**1842.705-1 Contracting officer determination procedure. (NASA supplements paragraph (a))**

(a) Applicability and responsibility.

(i) Since many NASA contractors are under DOD's final overhead rate determination procedure, NASA's policy is to participate jointly with DOD for those companies where NASA has a major financial interest. The NASA participant shall be a representative from that installation having the predominance of NASA work.

(ii) When NASA has been assigned the final indirect cost rate determination authority, settlement of indirect costs shall be conducted by the cognizant NASA contracting officer (normally from the installation providing the preponderance of NASA funding).

**1842.708 Quick-closeout procedure. (NASA supplements paragraph (a))**

(a)(2)(ii) The 15 percent parameter does not apply to NASA contracts. Instead, quick-closeout may be used if an individual contract's value, excluding fee, is not greater than \$2,000,000. Quick closeout may be used for contracts above \$2,000,000 with the prior approval of the installation procurement officer.

**1842.708-70 NASA quick-closeout procedures.**

After a decision is made that the use of quick closeout is appropriate, the contracting officer shall:

- (a) Obtain a written agreement from the contractor to participate in the quick-closeout process under FAR 42.708 for the selected contract(s).
- (b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved.
- (c) Notify the cognizant audit activity in writing, identify the contract(s), and request: (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.
- (d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.
- (e) Establish final indirect cost rates using one of the following rates:
  - (1) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(2) through (e)(6) of this section.
  - (2) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(3) through (e)(6) of this section.
  - (3) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.
  - (4) The contractor's negotiated billing rates, if less than paragraphs (e)(5) or (e)(6) of this section.
  - (5) The previous year's final rates.
  - (6) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established.
- (f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.
- (g) For those contracts where the indirect cost rate negotiation function was delegated or falls under the cognizance of another agency, send a copy of the agreement to that office.

**Subpart 1842.8—Disallowance of Costs****1842.803 Disallowing costs after incurrence. (NASA supplements paragraph (b))**

- (b) Auditor receipt of vouchers. (1) NASA has designated the contract auditor as the contracting officer's representative for—
  - (A) Reviewing vouchers received directly from contractors;
  - (B) Approving vouchers for provisional payment and sending them to the disbursing office;
  - (C) Reviewing completion/final vouchers and sending them to the designated contracting officer for approval.
- (2)(A) When contract costs are questioned, the auditor shall prepare and send to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved.
  - (B) After coordination with other NASA and Federal agency contracting officers administering contracts with the same contractor under which a NASA Form 456 or a DCAA Form 1 has been issued for the same items of cost, the NASA contracting officer shall take one of the following actions:
    - (a) Assign a notice number and sign the NASA Form 456.
    - (b) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.
    - (c) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being signed, and process the contractor's claim for payment.
    - (C) When more than one NASA contract is affected by a notice, the NASA contracting officer with the largest amount of contract dollars affected is responsible for coordination of the NASA Form 456 with the other contracting officers, including those of other Federal agencies, listed in the notice.
    - (D) An original and three copies (which includes two acknowledgment copies, one each for return to the contracting officer and the auditor) of the NASA Form 456 shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the Standard Form 1034 and each copy of the Standard Form 1034A on which the deduction for the suspension/disapproval is made.
    - (E)(a) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to the

current and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(b) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract unless those contracts contain a "no set-off" provision. If a set-off is affected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

**Subpart 1842.12—Novation and Change-of-Name Agreements****1842.1203 Processing agreements. (NASA supplements paragraphs (b) and (f))**

(b) The installation shall immediately notify the Headquarters Office of Procurement (Code HS) of the request to execute a novation (successor-in-interest) or change-of-name agreement.

(f) The contracting officer shall forward one copy of the agreement to the Code HS.

**1842.1203-70 DOD processing of novation and change-of-name agreements on behalf of NASA.**

(a) Appendix E of the NASA/DOD Agreement for Contract Administration and Contract Audit Services authorizes DOD to process novation and change-of-name agreements on behalf of NASA. Copies of agreements executed by DOD on behalf of NASA are maintained by the Headquarters Office of Procurement (Code HS).

(b) Code HS is the Agency point of contact for issues related to proposed novation agreements. With the concurrence of Code HS, an installation may execute a separate agreement with the contractor.

**Subpart 1842.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work****1842.1305 Contract clauses. (NASA supplements paragraph (b))**

(b) FAR 52.242-15, Stop-Work Order, shall not be used in solicitations or contracts for research performed by educational or other nonprofit institutions.

**Subpart 1842.14—Traffic and Transportation Management****1842.1405 Discrepancies incident to shipment of supplies. (NASA supplements paragraph (a))**

(a) NASA personnel shall also report discrepancies and adjust claims for loss of and damage to Government property in transit in accordance with NHB 6200.1, NASA Transportation and General Traffic Management.

**Subpart 1842.70—Additional NASA Contract Clauses****1842.7001 Observance of legal holidays.**

(a) The contracting officer shall insert the clause at 1852.242–72, Observance of Legal Holidays, in contracts when work will be performed at a NASA installation.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when it is desired that contractor employees not have access to the installation during Government holidays. This alternate may be appropriately modified for fixed-price contracts.

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when Alternate I is used and it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement

weather or potentially hazardous conditions.

**1842.7002 Travel outside of the United States.**

The contracting officer shall insert the clause at 1852.242–71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

**Subpart 1842.71—Submission of Vouchers****1842.7101 Submission of vouchers.**

(a) Vouchers shall be submitted in accordance with the clause at 1852.216–87, Submission of Vouchers for Payment.

(b) The auditor shall retain an unpaid copy of the voucher.

(c) When a voucher submitted in accordance with the clause at 1852.216–87 contains one or more individual direct freight charges of \$100 or more, an additional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the

“Completion Voucher,” an additional copy shall be submitted for transmittal to the NASA contracting officer.

**Subpart 1842.72—NASA Contractor Financial Management Reporting****1842.7201 General.**

(a) Contracting officer responsibilities. (1) Contracting officers must ensure contracts require cost reporting consistent with both policy requirements and project needs. Contracting Officers shall monitor contractor cost reports on a regular basis to ensure cost data reported is accurate and timely.

Adverse trends or discrepancies discovered in cost reports should be pursued through discussions with financial and project team members.

(2) Whenever cost performance threatens contract performance, contracting officers shall require corrective action plans from the contractors.

(b) Reporting requirements. (1) Use of the NASA Contractor Financial Management Reports, the NASA form 533 series, is required on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Contract value/scope	Period of performance	533M	533Q
\$500K to \$999K .....	1 year or more .....	Required .....	Optional.
\$1,000,000 and over .....	Less than 1 year .....	Required .....	Optional.
\$1,000,000 and over .....	1 year or more .....	Required .....	Required.

(2) When it is probable that a contract will ultimately meet the criteria in paragraph (b)(1) of this section through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract based on the estimated final contract value at the time of award.

(3) NF 533Q reporting may be waived by the contracting officer, with the concurrence of the center chief financial officer and cognizant project manager, for support service or task order contracts, when NF 533M reports and other data are sufficient to ensure accurate monthly cost accruals, evaluation of the contractor's cost performance, and forecasting of resource requirements.

(4) Where a specific contractual requirement differs from the standard system set forth in NPG 9501.2, NASA Contractor Financial Management Reporting, but is determined to be in the best interests of the Government and does not eliminate any of the data

elements required by the standard NF 533 formats, it may be approved by the contracting officer with the concurrence of the center chief financial officer and the project manager. Such approval shall be documented and retained, with the supporting rationale, in the contract file.

(5) The contractor's internal automated printout reports may be substituted for the 533 reporting formats only if the substitute reports contain all the data elements that would be provided by the corresponding 533's. The contracting officer shall coordinate any proposed substitute with the installation financial management office.

(c) Contract requirements. (1) Reporting requirements, including a description of reporting categories, shall be detailed in the procurement request, and reports shall be required by inclusion of the clause prescribed in 1842.7202. The contract schedule shall include report addressees and numbers

of copies. Reporting categories shall be coordinated with the center financial management office to ensure that data required for agency cost accounting will be provided by the reports. Reporting dates shall be in accordance with NPG 9501.2, except that earlier submission is encouraged whenever feasible. No due date shall be permitted which is later than the date by which the center financial management office needs the data to enter an accurate monthly cost accrual in the accounting system.

(2) The contractor shall be required to submit an initial report in the NF 533Q format, time phased for the expected life of the contract, within 30 days after authorization to proceed has been granted. NF 533M reporting will begin no later than 30 days after incurrence of cost. NF 533Q reporting begins with the initial report.

**1842.7202 Contract clause.**

The contracting officer shall insert the clause at 1852.242–73, NASA

Contractor Financial Management Reporting, when any of the NASA Form 533 series of reports are required from the contractor.

#### **Subpart 1842.73—Audit Tracking and Resolution**

##### **1842.7301 NASA external audit follow-up system.**

(a) This section implements OMB Circular No. A-50, NASA Management Instruction (NMI) 9970.1A, Audit Follow-up, and NASA Audit Follow-up Handbook 9970.2, which provide more detailed guidance. Recommendations for external audits (contracts and OMB Circulars No. A-128, Audits of State and Local Governments, and A-133, Audits of Institutions of Higher Learning and Other Non-Profit Institutions) shall be resolved by formal review and approval procedures analogous to those at 1815.807-71.

(b) The external audit follow-up system tracks all contract and OMB Circular A-128 or A-123 audits where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but a maximum, within 6 months of the date of the audit report.

(c) (1) The identification and tracking of contract audit reports under NASA cognizance are accomplished in cooperation with DCAA by means of the DCAA form, Contract Audit Follow-up Summary Sheet. The use of this form by DCAA and NASA is covered in Chapter 6 of the NASA Audit Follow-up Handbook.

(2) Identification and tracking of A-128 and A-133 audit reports are accomplished in cooperation with the NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA field installation having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify whether there were any audit findings.

(d)(1) Chapter 6 of the NASA Audit Follow-up Handbook identifies which contract audit reports are reportable semiannually to the Headquarters Office of Procurement (Code HC).

(2) Only trackable A-128 and A-133 audit reports involving the following shall be reported semiannually to Code HC—

(i) A significant management control issue; or

(ii) For an individual NASA award, either the lower of 10 percent or \$10,000

of the costs incurred in the period covered by the audit are questioned; or for institution-wide issues, the lower of 10 percent or \$10,000 of the total costs incurred involving Government funds for the period covered by the audit are questioned.

(e)(1) The resolution and disposition of contract audits is covered by Chapter 6 of the NASA Audit Follow-up Handbook.

(2) The resolution and disposition of A-128 and A-133 are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having an institution-wide impact are the responsibility of the cognizant Federal agency or the agency responsible for oversight. OMB's January 6, 1986, **Federal Register** Notice (51 FR 552), titled "Federal Agencies Responsible for Cost negotiation and Audit of State and Local Governments," provides cognizant agency assignments for OMB Circular A-128. For organizations subject to OMB Circular A-133, there is either a cognizant agency or an oversight agency. The cognizant agency is the Federal agency that provides the predominant amount of direct funding to the recipient organization unless OMB makes a specific agency cognizant, in which case a notice will be published in the **Federal Register**. To provide for the continuity of cognizance, the determination of the predominant amount of direct funding will be based on the direct Federal awards expended in the recipient's fiscal years ending in 1996, 2000, and every fifth year thereafter. If there is no cognizant Federal agency, there is an agency responsible for oversight. The oversight agency is that agency which provides the predominant amount of direct funding. When there is no direct funding, the Federal agency with the predominant indirect funding is to assume the oversight responsibilities. In cases where NASA is the cognizant or oversight Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the field installation having the largest amount of direct funding, or, if there is no direct funding, the largest amount of indirect funding for the audited period. A copy of the memorandum disappointing the findings shall be provided by each field installation having resolution responsibility for the particular report to the OIG Center office within whose geographic area of responsibility the audited organization is located.

12. Part 1843 is revised to read as follows:

#### **PART 1843—CONTRACT MODIFICATIONS**

##### **Subpart 1843.2—Change Orders**

Sec.

1843.205 Contract clauses.

1843.205-70 NASA contract clause.

##### **Subpart 1843.70—Un definitized Contract Actions**

1843.7001 Definitions.

1843.7002 Policy.

1843.7003 Procedures.

1843.7004 Exceptions.

1843.7005 Definitions.

##### **Subpart 1843.71—Shared Savings**

1843.7101 Shared Savings Program.

1843.7102 Solicitation provision and contract clause.

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

##### **Subpart 1843.2—Change Orders**

##### **1843.205 Contract clauses.**

As authorized in the prefaces of clauses FAR 52.243-1, Changes—Fixed Price; FAR 52.243-2, Changes—Cost Reimbursement; FAR 52.243-3, Changes—Time-and-Material or Labor-Hours; and FAR 52.243-4, Changes, the period within which a contractor must assert its rights to an equitable adjustment may be varied not to exceed 60 calendar days.

##### **1843.205-70 NASA contract clause.**

(a) The contracting officer may insert in contracts a clause substantially the same as 1852.243-70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract. A local format may be substituted for the MIL-STD-973 format.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

##### **Subpart 1843.70—Un definitized Contract Actions**

##### **1843.7001 Definitions.**

*Un definitized contract action (UCA)* means a unilateral or bilateral contract modification or delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts



and their modifications are governed by subpart 1816.6.)

#### **1843.7002 Policy.**

Undefinitized contract actions shall be executed by contracting officers on an exception basis and shall be limited to the minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

#### **1843.7003 Procedures.**

(a) Issuance of undefinitized contract actions with a Government estimated cost or price over \$1,000,000 must be approved in writing by the Center Director. This approval authority is not delegable. Issuance of undefinitized contract actions with a Government estimated cost or price less than or equal to \$1,000,000 shall also be minimized but may be approved on an exception basis in accordance with installation procedures.

(b) (1) Undefinitized contract actions exceeding \$1,000,000 approved by the Center Director shall be issued as bilateral agreements setting forth a ceiling price or "not to exceed" estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the "not to exceed" estimated cost figure shall be non-fee bearing. The ceiling price or "not to exceed" estimated cost figures shall be separately identified in the UCA instrument from the pricing structure of the basic contract.

(2) The Center Director may waive the ceiling price or "not to exceed" estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than \$1,000,000 and not excepted under subpart 1843.7004, a 180 day funding profile shall be obtained from the contractor prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or

price greater than \$1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

#### **1843.7004 Exceptions.**

(a) Exceptions to the requirement for Center Director approval for issuance of undefinitized contract actions are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modification resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modification to letter contracts.

(b) The contract file for any of the modifications in paragraph (a) of this section shall cite the exception and include complete supporting rationale for its applicability.

#### **1843.7005 Definitization.**

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitive UCAs within 180 from date of issuance.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

#### **Subpart 1843.71—Shared Savings**

##### **1843.7101 Shared Savings Program.**

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may

require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

#### **1843.7102 Solicitation provision and contract clause.**

The contracting officer shall insert the clause at 1852.243-71, Shared Savings, in all solicitations and contracts expected to exceed \$1,000,000, except those awarded under FAR part 12, NRA and AO procedures, or the SBIR and STTR programs.

13. Part 1844 is revised to read as follows:

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

#### **Subpart 1844.2—Consent to Subcontracts**

Sec.

1844.201 Consent requirements.

1844.201-1 Fixed-price prime contracts.

1844.201-2 Cost reimbursement and letter prime contracts.

1844.202 Contracting officer's evaluation.

1844.202-1 Responsibilities.

1844.204 Contract clauses.

1844.204-70 NASA contract clause.

#### **Subpart 1844.3—Contractors' Purchasing Systems Reviews**

1844.302 Requirements.

1844.302-70 DCMC-conducted contractor purchasing system reviews.

1844.302-71 NASA-conducted contractor purchasing systems reviews.

1844.304 Surveillance.

1844.304-70 Contracting officer surveillance.

1844.305 Granting, withholding, or withdrawing approval.

1844.305-70 Review of CPSR report.

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

#### **Subpart 1844.2—Consent to Subcontracts**

##### **1844.201 Consent requirements.**

##### **1844.201-1 Fixed-price prime contracts. (NASA supplements paragraph (b))**

(b)(2) (A) In determining special surveillance consent requirements, the contracting officer should consider specific subcontract awards, as well as any individual systems, subsystems, components, technologies, and services that should have contracting officer consent prior to being subcontracted.

(B) For each planned contract award expected to exceed \$1 million in total estimated value (inclusive of options), the contracting officer should consider such factors as the following to determine whether certain subcontractors require special surveillance:

(a) The degree of subcontract pricing uncertainties at the time of contract award;



(b) The overall quality of the contractor's approach to pricing subcontractors;

(c) The extent of competition achieved, or to be achieved, by the contractor in the award of subcontracts;

(d) Technical complexity and the critically of specific supplies, services, and technologies on the successful performance of the contract; and

(e) The potential impact of planned subcontracts on source selection or incentive arrangements.

(C) The contracting officer shall document results of the review in the contract file. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (b)(2)(B) of this section whenever the value of any subcontract resulting from the change order or modification is proposed to exceed \$100,000 or is one of the number of subcontracts with a single subcontractor for the same or related supplies or services that are expected cumulatively to exceed \$100,000.

**1844.201-2 Cost reimbursement and letter prime contracts. (NASA supplements paragraph (c))**

(c)(2) The policy in 1844.201-1(b)(2) shall be followed to determine whether certain subcontracts require special surveillance. In addition, any subcontract under a cost type prime contract shall be identified for special surveillance if consent was not provided at the time of contract award and cost of pricing data would be required in accordance with FAR 15.806-2(a) (1) or (2).

**1844.202 Contracting officer's evaluation.**

**1844.202 Responsibilities. (NASA supplements paragraph (a))**

(a) NASA contracting officers shall retain consent to subcontract authority unless delegation is approved in writing by the procurement officer.

**1844.204 Contract clauses.**

**1844.204-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.244-70, Geographic Participation in the Aerospace Program, in all research and development solicitations and contracts of \$500,000 or over that will be performed within the United States.

**Subpart 1844.3—Contractors' Purchasing Systems Reviews**

**1844.302 Requirements.**

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

For contracts within their cognizance, NASA contracting officers shall be

aware of purchasing system approval status and should become actively involved with the Defense Contract Management Command (DCMC) in the Contractor Purchasing System Review (CPSR) process. Involvement should include the following:

(a) Verifying that CPSRs are being conducted as required for each contractor meeting the thresholds in FAR 44.302.

(b) Ensuring that purchasing system review specifically includes the business unit performing the NASA contract.

(c) Actively participating as a team member, or arranging NASA representation, on DCMC CPSRs to review areas of NASA-specific interest. At a minimum, such participation or representation shall be arranged when the DCMC CPSR review involves—

(1) Contractors with major NASA programs;

(2) Contractors' business units where the total dollar value of NASA contracts is substantial; or

(3) Any contractor system where the contracting officer has special concerns.

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMC CPSR team leader any areas of special emphasis regarding the contractor's purchasing system to ensure that the review is tailored to address any NASA concerns.

**1844.302-71 NASA-conducted contractor purchasing system reviews.**

If a NASA activity is the cognizant contract administration officer, or after coordination with the cognizant DCMC CPSR office it is determined that a CPSR is required but cannot be accomplished by DCMC, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader:

(a) May use the DOD FAR Supplement, Contractor Purchasing System Review (CPSR) guidance, as a general guide to conducting the CPSR.

(b) May vary the scope of review depending on the contractor and contracts involved.

(c) Shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

**1844.304 Surveillance.**

**1844.304-70 Contracting officer surveillance.**

(a) In the period between complete CPSRs, NASA contracting officers shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA

contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of subcontract consent reviews. Other methods of surveillance, including periodic reviews of contractor purchasing records, may also be conducted. Contracting officers shall document the results of subcontract consent reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, the need for special reviews, and recommended areas of emphasis during future CPSRs.

**1844.305 Granting, withholding, or withdrawing approval.**

**1844.305-70 Review of CPSR reports.**

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers shall review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of purchasing system approval. Significant issues or significant conflicts with DOD CPSR results should be formally referred to the Office of Procurement (Code HS).

14. Part 1846 is revised to read as follows:

**PART 1846—QUALITY ASSURANCE**

**Subpart 1846.3—Contract Clauses**

Sec.

1846.370 NASA contract clauses.

**Subpart 1846.4—Government Contract Quality Assurance**

1846.470 Contract clause.

**Subpart 1846.6—Material Inspection and Receiving Reports**

1846.670 Introduction.

1846.670-1 General.

1846.670-2 Applicability.

1846.670-3 Use.

1846.670-4 Multiple shipments.

1846.670-5 Forms.

1846.671 Contract quality assurance on shipments between contractors.

- 1846.672 Preparing DD Forms 250 and 250c.  
 1846.672-1 Preparation instructions.  
 1846.672-2 Consolidated shipments.  
 1846.672-3 Multiple consignee instructions.  
 1846.672-4 Correction instructions.  
 1846.672-5 Invoice instructions.  
 1846.672-6 Packing list instructions.  
 1846.672-7 Receiving instructions.  
 1846.673 Distribution of DD Forms 250 and 250c.  
 1846.674 Contract clause.

#### Subpart 1846.7—Warranties

- 1846.703 Criteria for use of warranties.  
 1846.703-70 Additional criteria.  
 1846.704 Authority for use of warranties.  
 1846.770 Administration.

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

#### Subpart 1846.3—Contract Clauses

##### 1846.370 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.246-70, Mission Critical Space System Personnel Reliability Program, in solicitations and contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program.

(b) The contracting officer shall insert the clause at 1852.246-73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

#### Subpart 1846.4—Government Contract Quality Assurance

##### 1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

#### Subpart 1846.6—Material Inspection and Receiving Reports.

##### 1846.670 Introduction.

##### 1846.670-1 General.

(a) This Subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to evidence Government contract quality assurance (CQA).

(b) MIRRs are used to document CQA, acceptance of supplies and services, and shipments. MIRRs are not used for—

- (1) Shipments by subcontractors not made to the Government;
- (2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

##### 1846.670-2 Applicability.

(a) This subpart applies to all deliveries of supplies or services acquired by or for NASA except:

- (1) Acquisitions under FAR part 13;
  - (2) Negotiated subsistence acquisitions; or
  - (3) Contracts for which the end item is a technical or scientific report.
- (b) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

(c) When NASA provides CQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

##### 1846.670-3 Use.

The DD Form 250 is a multipurpose report used for—

- (a) Providing evidence of CQA at origin or destination;
- (b) Providing evidence of acceptance at origin or destination;
- (c) Packing list documentation;
- (d) Receiving;
- (e) Shipping;
- (f) Contractor invoice; and
- (g) Contractor invoice support.

##### 1846.670-4 Multiple shipments.

(a) If the “shipped to,” “marked for,” “shipped from,” “CQA,” and “acceptance” data are the same for more than one shipment made on the same day under the same contract in a single car, truck, or other vehicle, one MIRR shall be prepared to cover all such shipments.

(b) If the volume of the shipments precludes the use of a single car, truck, or other vehicle, a separate MIRR shall be provided for each vehicle.

##### 1846.670-5 Forms.

(a) Contractors may obtain MIRR forms from the contracting office at no cost.

(b) Contractors may print forms, provided their format and dimensions are identical to the MIRR forms printed by the Government.

##### 1846.671 Contract quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall

indicate performance of required CQA actions at subcontract level.

The following entries shall be made on the document/packing list:

Required CQA of items has been performed.

---

(Signature of Authorized Government Representative)

---

(Date)

---

(Typed Name and Office)

(b) Distribution for Government purposes shall be one copy each—

- (1) With shipment;
- (2) For the Government representative at consignee (via mail); and
- (3) For the Government representative at consignor.

##### 1846.672 Preparing DD Forms 250 and 250c.

##### 1846.672-1 Preparation instructions.

(a) General. (1) Dates shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 96SEP24).

(2) Addresses shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) The data entered in the blocks at the top of DD Form 250C shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT).* Enter the contract number, with its identifying center prefix, as contained in the contractual document, including any call/order number.

(d) *Block 2—SHIPMENT NO.* (1) The shipment number is a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each “shipped from” address (Block 11). The prefix shall be different for each “Shipped From” address and shall remain constant throughout the contract period.

(ii) The serial number for the first shipment under a prime contract from

each "shipped from" address shall be 0001; subsequent shipments under that prime contract shall be consecutively numbered. Alpha- numerics shall be used when more than 9,999 numbers are required. Alpha- numerics shall be serially assigned, with the alpha in the first position, followed by the three- position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999. When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a "replacement shipment" is involved (see paragraph (r)(4)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect

(i) To direct the subcontractor to suffix the "Z" or

(ii), On receipt of the subcontractor final shipment information, to correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a "Z" to that shipment number.

(e) **Block 3—DATE SHIPPED.** Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(f) **Block 4—B/L TCN.** When applicable, enter the commercial or Government bill of lading number after "B/L"; and the Transportation Control Number after "TCN."

(g) **Block 5—DISCOUNT TERMS.** (1) The Contractor may enter the discount in terms of percentages on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-5.

(h) **Block 6—INVOICE.** (1) The contractor may enter the invoice number and actual or estimated date on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(2) When the MIRR is used as an invoice, see 1846.672-5.

(i) **Block 7—PAGE/OF.** Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) **Block 8—ACCEPTANCE POINT.** Enter an "S" for origin or "D" for destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for other if the point of acceptance is not specified in the contract.

(k) **Block 9—PRIME CONTRACTOR.** Enter the code and address.

(l) **Block 10—ADMINISTERED BY.** Enter the code and address of the contracting office cited in the contract.

(m) **Block 11—SHIPPED FROM/ CODE/FOB.** (1) Enter the code and address of the "shipped from" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services that do not require delivery of items upon completion, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" an "S" for origin or "D" for destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) **Block 12—PAYMENT WILL BE MADE BY.** Enter the address of the payment office cited in the contract.

(o) **Block 13—SHIPPED TO/CODE.** Enter the code and address from the contract or shipping instructions.

(p) **Block 14—MARKED FOR/CODE.** Enter the code and address from the contract or shipping instructions.

(q) **Block 15—ITEM NO.** Enter the item number used in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) **Block 16—STOCK/PART NO./ DESCRIPTION.** (1) Enter, as applicable, for each item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal Supply Code (as published in Cataloging Handbook H4-1), and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/

material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind (e.g., "Resistor"). Below this description, enter the contract item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) For service items, enter the word "SERVICE" followed by a short description of less than 20 characters. Do not complete items 4, 13, and 14 when material is not shipped.

(3) For all contracts administered by the Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt.\_\_\_\_(State weight in pounds only).

(4) Enter on the next line the following as appropriate (entries may be extended through Block 20). When entries apply to more than one item in the MIRR, enter them only once after the last item and reference the applicable item numbers.

(i) Enter in capital letters any special handling instructions/limits for material environmental control (e.g., temperature, humidity, aging, freezing, and shock).

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter "GFP".

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT" (see paragraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification \_\_\_\_\_, Quantity \_\_\_\_\_, Estimated Value \_\_\_\_\_, Authority \_\_\_\_\_."

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: "These components were

listed as shortages on Shipment Number \_\_\_\_\_, date shipped \_\_\_\_\_."

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to \_\_\_\_\_, Quantity \_\_\_\_\_, Item \_\_\_\_\_, Ownership (Government/contractor)."

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering "PAYMENT COPY" in approximately one-half-inch outline-type letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) **Block 17—QUANTITY SHIP/REC'D.** (1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" top designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) **Block 18 UNIT.** Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage.

(u) **Block 19—UNIT PRICE.** Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) **Block 20—AMOUNT.** Enter the extended amount when the unit price is entered in Block 19.

(w) **Block 21—CONTRACT QUALITY ASSURANCE.** The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) "A. ORIGIN."

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) "B. DESTINATION."

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance of CQA and acceptance are at destination, the authorized Government representative shall—

(A) Place an "X" in the appropriate box(es);

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(x) **Block 22—RECEIVER'S USE.** This block shall be used by the receiving

authority (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) **Block 23—CONTRACTOR USE ONLY.** This block is provided and reserved for contractor use.

#### 1846.672-2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

#### 1846.672-3 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter "See Attached Distribution List."

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the "total" quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

#### 1846.672-4 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 and 17, enter the words *"CORRECTIONS HAVE BEEN VERIFIED"* on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) MIRRs shall not be corrected for Block 19 and 20 entries.

(d) Clearly mark pages of the MIRR requiring correction with the words *"CORRECTED COPY"*, avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, also mark page 1 *"CORRECTED COPY"*.

(e) Page 1 and only those continuation pages marked *"CORRECTED COPY"* shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

#### 1846.672-5 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice in lieu of a commercial form. If the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy *"ORIGINAL INVOICE"* and the remaining three copies *"INVOICE COPY"*.

(c) Forward the four copies to the payment office (Block 12 address).

#### 1846.672-6 Packing list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked *"PACKING LIST"*.

#### 1846.672-7 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If acceptance or CQA and acceptance of supplies are required upon arrival at destination, see Block 21B for instructions.

#### 1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

#### 1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts, except those using simplified acquisition procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared. Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

#### Subpart 1846.7—Warranties

##### 1846.703 Criteria for use of warranties.

##### 1846.703-70 Additional criteria.

In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) Cost of correction or replacement, either by the contractor or by another source, in the absence of a warranty;

(b) The warranty as a deterrent against the furnishing of defective or nonconforming supplies;

(c) Whether the contractor's quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective quality program;

(d) Reliance on "brand-name" integrity; and

(e) Whether a warranty is regularly given for a commercial component of a more complex end item.

##### 1846.704 Authority for use of warranties. (NASA paragraphs (1), (2) and (3))

(1) A warranty clause may be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703-70 and FAR 46.703.

(2) Except for the warranty of commercial items (see FAR 12.404 and 46.709), and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the procurement officer or a designee. This decision may be made either for individual acquisitions or classes of acquisitions.

(3) Warranties required by applicable architect-engineer specifications shall be included in construction contracts.

##### 1846.770 Administration.

When notified of a defect in warranted items, the contracting officer should ascertain whether the warranty is currently in effect and ensure that the

contractor is given proper and timely notice of the defect.

15. Part 1847 is revised to read as follows:

#### PART 1847—TRANSPORTATION

##### Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

1847.200 Scope of subpart.

1847.200-70 Charter of aircraft.

##### Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

1847.305-13 Transit arrangements.

1847.305-70 NASA contract clauses.

##### Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

##### Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

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

##### Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200-70 Charter of aircraft.

When acquiring aircraft by charter, contracting officers shall comply with NHB 7900.3, Aircraft Operations Management Manual.

##### Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

NASA has export licensing privileges for moving commodities to foreign destinations. Contracting officers shall request the advice of the Center Export Administrator to ensure full and appropriate use is made of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

In contracts providing for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the

consignee (receiving activity), provided the contract instructions state:  
 "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor."

**1847.305-13 Transit arrangements. (NASA supplements paragraph (a))**

(a)(3)(ii) When the provision at FAR 52.247-56 is used, the solicitation shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

**1847.305-70 NASA contract clauses.**

(a) The contracting officer may insert a clause substantially as stated at 1852.247-72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b. point is destination and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer may insert a clause substantially as stated at 1852.247-73, Shipment of Government Bills of Lading, in f.o.b. origin solicitations and contracts.

**Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels**

**1847.506 Procedures. (NASA supplements paragraph (d))**

(d)(i) The transportation officer in each installation shall establish and maintain a register to reflect adherence to the Cargo Preference Act. The register shall contain data related to shipments made by the installation and by NASA contractors. Where no transportation officer is available, it shall be maintained by the contracting office. The register shall contain pertinent details of ocean shipments including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. The register shall be maintained current and organized so that adherence to the Cargo Preference Act can be ascertained at all times. To the maximum practicable extent, compliance with the 50-percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis; any deficiencies in maintaining compliance shall be corrected by the end of the calendar year.

(ii) On the basis of the registers maintained under paragraph (d)(i) of this section, the official maintaining the register shall submit quarterly reports reflecting ocean shipments to the

Division of National Cargo, Office of Market Development, Maritime Administration, Department of Transportation, Washington, DC, 20590. Negative reports are required when applicable.

**Subpart 1847.70—Protection of the Florida Manatee**

**1847.7001 Contract clause.**

The contracting officer shall insert the clause at 1852.247-71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees. The clause shall also be included in applicable subcontracts (including vendor deliveries).

16. Part 1848 is revised to read as follows:

**PART 1848—VALUE ENGINEERING**

**Subpart 1848.1—Policies and Procedures**

Sec.

1848.102 Policies.

1848.103 Processing value engineering change proposals.

1848.104 Sharing arrangements.

1848.104-2 Sharing collateral savings.

**Subpart 1848.2—Contract Clauses**

1848.201 Clauses for supply or service contracts.

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

**Subpart 1848.1—Policies and Procedures**

**1848.102 Policies. (NASA supplements paragraphs (a) and (f))**

(a) The Associate Administrator for Procurement (Code HS) is the approval authority for exemptions.

(f) In calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

**1848.103 Processing value engineering change proposals. (NASA supplements paragraph (a))**

(a) Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract with the following information:

(i) Date of VECP receipt;

(ii) Date for notifying the contractor of VECP acceptance or rejection;

(iii) Notification of the potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(iv) Request for a technical evaluation, with complete rationale for recommended acceptance or rejection, to include if acceptance is recommended:

(A) An estimate of the type of savings, Government costs, etc., that can be expected from its acceptance;

(B) A procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(C) Additional funds if acceptance of the VECP results in negative instant contract savings.

(v) Technical evaluation due date.

**1848.104 Sharing arrangements.**

**1848.104-2 Sharing collateral savings.**

The contracting officer is authorized to make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

**Subpart 1848.2—Contract Clauses**

**1848.201 Clauses for supply or service contracts. (NASA supplements paragraphs (a), (b), (c), and (d))**

(a)(6) The Associate Administrator for Procurement (Code HS) is the approval authority for exemptions.

(b) The contracting officer shall not insert the clause at FAR 52.248-1, Value Engineering, either with or without its Alternates, in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might benefit from application of VE techniques, the contracting officer shall consider inserting the VE incentive clause at FAR 52.248-1 with any applicable Alternate(s), and establish the applicability of the clause to that part.

(c) Except as prescribed in paragraph (b) of this section, the contracting officer shall insert the clause at FAR 52.248-1 with its Alternate I in initial production contracts for major systems, and major systems R&D contracts for full-scale development, unless the contracting officer determines in writing that its use is inappropriate. Use of Alternate I is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that lend themselves to VE.

(d) The contracting officer shall insert the clause at FAR 52.248-1 with its Alternate II under the conditions prescribed in paragraph (c) of this section

17. Part 1849 is revised to read as follows:

## **PART 1849—TERMINATION OF CONTRACTS**

### **Subpart 1849.1—General Principles**

Sec.

- 1849.101 Authorities and responsibilities.
- 1849.101-70 NASA authorities and responsibilities.
- 1849.101-71 Termination authority.
- 1849.102 Notice of termination.
- 1849.102-70 Prior clearance of significant contract terminations.
- 1849.105 Duties of termination contracting officer after issuance of notice of termination.
- 1849.105-70 Termination docket checklist.
- 1849.110 Settlement negotiation memorandum.
- 1849.110-70 Memorandum contents.
- 1849.111 Review of proposed settlements.

### **Subpart 1849.5—Contract Termination Clauses**

- 1849.505 Other termination clauses.
- 1849.505-70 NASA contract clause.

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

### **Subpart 1849.1—General Principles**

#### **1849.101 Authorities and responsibilities.**

##### **1849.101-70 NASA authorities and responsibilities.**

(a) Installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. In addition to the responsibilities described in this part and FAR part 49, such duties should include—

- (1) Reviewing NASA Forms 1412, Termination Authority;
- (2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract; and
- (3) Issuing notices of termination, reinstatement, and rescission to contractors;

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the negotiation of termination settlement function shall be made in accordance with FAR subpart 42.2 and 1842.2.

##### **1849.101-71 Termination authority.**

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the activity initiating the

procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

#### **1849.102 Notice of termination.**

##### **1849.102-70 Prior clearance of significant contract terminations.**

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through the Headquarters Office of Legislative Affairs (Code LB) before release of the termination notice, or any information on the proposed termination, to the contractor. Proposed terminations expected to result in a reduction of fewer than 100 should be similarly cleared if the installation believes it to be significant.

(b) The contracting officer shall submit the following information to Code LB, and a copy to the Office of Procurement (Code HS), as soon as possible after the decision to terminate is made. Until clearance is obtained, this information shall be treated as "For Official Use Only" unless the information is classified.

- (1) Contract number.
- (2) Date of award.
- (3) Type of award.
- (4) Name of company.
- (5) Nature of contract or end item.
- (6) Reasons for the termination.
- (7) Contract price of items terminated.
- (8) Total number of contractor employees involved, including the Government's estimate of the number that may be discharged.
- (9) Anticipated impact on the company and the community.
- (10) Name of the community affected.
- (11) Area labor category.
- (12) Whether contractor is large or small business.
- (13) Any known impact on disadvantaged employment programs.
- (14) Total number of subcontractors involved and the impact in this area, if known.
- (15) Unclassified draft of suggested press release.

(c) To minimize termination costs, Code LB shall act promptly on the request and provide a response not later than two working days after receipt of the information in paragraph (b) of this section.

##### **1849.105 Duties of termination contracting officer after issuance of notice of termination.**

##### **1849.105-70 Termination docket checklist.**

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist.

##### **1849.110 Settlement negotiation memorandum.**

##### **1849.110-70 Memorandum contents.**

The TCO shall include the following information in the settlement negotiation memorandum. Contractors and subcontractors are encouraged to use this format appropriately modified for subcontract settlements submitted for review and approval.

- (a) General information—(1) Identification. (i) Name and address of the contractor and any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement. (ii) Names and titles of contractor and Government personnel who participated in the negotiation.
- (2) Description of terminated contract. (i) Contract number; (ii) Date of award; (iii) Contract type; (iv) General description of contract items; (v) Total contract price; and (vi) Applicable contract termination provisions and clause.
- (3) Termination notice. (i) Date of the termination notice; (ii) Effective date of termination; (iii) Scope and nature of termination (complete or partial); (iv) Items terminated; (v) Unit prices; (vi) Total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts; (vii) Whether the termination notice was amended and, if so, why; (viii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly; (ix) Any redirection of common items and return of goods to the contractor's suppliers; and (x) Extent of contract performance and timely deliveries by the contractor.
- (b) Contractor's settlement proposal—(1) Date and amount. Date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim). (2) Basis of claim. E.g., inventory, total cost, or other basis, including an explanation of any approvals granted in connection with submission on other than an inventory basis.
- (3) Examination of proposal. Types of reviews made and by whom (audit, engineering, legal, or other).
- (c) Tabular summary of contractor's claim and the settlement. The cost



elements/items, the amounts claimed, the Government recommended position (including auditor, field, and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, previously reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The summary of the negotiated settlement shall include the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(d) Settlement narrative summary.

(1) Contractor's cost.

(2) Profit/Fee.

(3) Settlement expenses not included in the audit.

(4) Number and dollar amount of any subcontractor settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) Total amount of any partial payments.

(6) Total of unliquidated progress or advance payments.

(7) Claims of the Government against the contractor included in settlement agreement reservations.

(8) Assignments, including the name and address of each assignee.

(9) Disposal credits.

(10) Status of plant clearance actions and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations, including a consolidated closing plant clearance report, if applicable.

(11) Status of Government property accountability.

(12) Disposition of any special tooling, if applicable.

(13) Proposed reservations of rights to the Government or to the contractor.

(e) Recommendation. Amount of the gross settlement recommended and TCO statement that it is fair and reasonable to the Government and the contractor.

(f) TCO Signature and date.

#### **1849.111 Review of proposed settlements. (NASA paragraphs (1) and (2))**

(1) Settlements shall be reviewed in accordance with center-prescribed procedures.

(2) The TCO may authorize the contract administration office cognizant of a lower-tier subcontractor grant approval or ratification of proposed subcontractor settlements described in FAR 49.108-3(c) that are first reviewed and referred by the prime contractor to the TCO. This procedure is not

applicable to settlements between the contractor and its first tier subcontractors.

#### **Subpart 1849.5—Contract Termination Clauses**

##### **1849.505 Other termination clause.**

##### **1849.505-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all solicitations and contracts for utilities services.

18. Part 1850 is revised to read as follows:

#### **PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS**

##### **Subpart 1850.2—Delegation of and Limitations on Exercise of Authority**

Sec.

1850.202 Contract adjustment boards.

##### **Subpart 1850.3—Contract Adjustments**

1850.305 Processing cases.

1850.305-70 Submission of request to the Contract Adjustment Board.

1850.306 Disposition.

1850.306-70 Implementation of the Contract Adjustment Board's decision.

##### **Subpart 1850.4—Residual Powers**

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403-1 Indemnification requests.

1850.403-170 Subcontractor indemnification requests.

1850.403-2 Action on indemnification requests.

1850.470 Lead NASA installation.

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

##### **Subpart 1850.2—Delegation of and Limitations on Exercise of Authority**

##### **1850.202 Contract adjustment boards.**

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

##### **Subpart 1850.3—Contract Adjustments**

##### **1850.305 Processing cases.**

##### **1850.305-70 Submission of request to the Contract Adjustment Board.**

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law (Code GG), including in the forwarding letter—

(1) The nature of the case;

(2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's

opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

##### **1850.306 Disposition.**

##### **1850.306-70 Implementation of the Contract Adjustment Board's decision.**

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law (Code GG).

##### **Subpart 1850.4—Residual Powers**

##### **1850.403 Special procedures for unusually hazardous or nuclear risks.**

##### **1850.403-1 Indemnification requests. (NASA supplements paragraph (a))**

(a) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

##### **1850.403-170 Subcontractor indemnification requests.**

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.403-1. The prime contractor's request shall provide information responsive to 1850.403-1, FAR 50.403-1, and FAR 50.403-2(a) (1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

**1850.403-2 Action on indemnification requests. (NASA supplements paragraphs (a) and (d))**

(a) If recommending approval, the contracting officer shall forward the required information to the Associate Administrator for Procurement (Code HS), along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.306, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

(C) The extend to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.403-2(a) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

**1850.470 Lead NASA installation.**

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

19. Part 1851 is revised to read as follows:

**PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS****Subpart 1851.1—Contractor Use of Government Supply Sources**

Sec.

1851.101 Policy.

1851.102 Authorization to use Government supply sources.

1851.102-70 Contractor acquisition of filing cabinets.

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

**Subpart 1851.1—Contractor Use of Government Supply Sources****1851.101 Policy.**

Use of official Government mailing privileges by NASA contractors is covered in NMI 1450.11, NASA Mail Management Program.

**1851.102 Authorization to use Government supply sources. (NASA supplements paragraph (e)).**

(e) The contracting officer shall use substantially the following format for letters authorizing contractor use of Government supply sources:

SUBJECT: Authorization to Lease, Rent, or Purchase from General Services Administration (GSA) Supply Sources  
(Contractor's name) \_\_\_\_\_  
(Address) \_\_\_\_\_

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of supplies and/or services under Contract No. \_\_\_\_\_ available for purchase by Government agencies either directly from GSA stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(ii) The leasing or rental of equipment for use on Contract No. \_\_\_\_\_ available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the government is not liable on supplies or services purchased under this authorization.

(2)(i) Purchase orders under GSA schedules and contracts shall be placed in accordance with the terms and conditions of the GSA schedule or contract and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the GSA contractor) and shall contain the following statement:

"This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. \_\_\_\_\_,

pursuant to written authorization dated \_\_\_\_\_, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern."

(ii) Orders for items in the GSA Supply Catalog shall be placed in accordance with the Catalog and this authorization and shall include the address to which billings are to be sent. Bills are not issued by GSA until after shipment has been made and should therefore be paid promptly. Any necessary adjustments will be made by GSA subsequent to payment. All orders shall contain the following statement:

"This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. \_\_\_\_\_, pursuant to written authorization dated \_\_\_\_\_, a copy of which (is attached) (you have on file)."

(3) (Insert any other provisions and restrictions.)

(4) The authority hereby granted is not transferable or assignable.

(Contracting Officer)

(e)(3) Contracting officers shall use NHB 4100.1, NASA Materials Inventory Management Manual, to obtain activity address codes to enable use of FEDSTRIP and MILSTRIP.

**1851.102-70 Contractor acquisition of filing cabinets.**

(a) The Contractor officer must approve any planned contractor acquisition of filing cabinets whose title will vest in the Government. The contracting officer shall ensure that the contractor takes the following actions before submitting a request for approval:

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods; and

(4) Take other actions to reduce the need for filing cabinets.

(b) If after taking the actions in paragraphs (a)(1) through (4) of this section, the contractor requires additional filing capacity, it shall submit for contracting officer approval a request to order filing cabinets. This request shall include a discussion of why sufficient additional filing capacity is necessary and shall address the results of the actions in paragraphs (a)(1) through (4) of this section. The contracting officer shall review the request in consultation with the Records Management Officer, the Property and Supply Officer, and the project officer, is appropriate.

(c) If the need for filing cabinets is approved, the contracting officer shall

attempt to fill the need by providing any available excess items of the type required through appropriate property accountability channels. Approved requests that cannot be filled from excess shall be returned to the contractor with an authorization to obtain file cabinets, preferably through GSA.

## **PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **1852.211–72, 1852.211–74 [Removed]**

20–21. Sections 1852.211–72 and 1852.211–74 are removed.

### **1852.223–70 [Amended]**

22. In the clause to section 1852.223–70, the date “(FEB 1996)” is revised to read “(MAR 1997)”, and in paragraph (g)(2) of the clause the phrase “A certification program” is revised to read “Qualification standards”.

### **1852.223–73 [Amended]**

23. In the introductory text to section 1852.223–73, the citation “1823.7001” is revised to read “1823.7001(c)”, and in the introductory text to ALTERNATE I of section 1852.223–73, the citation “1823–7001” is revised to read “1823.7001(d)”.

### **1852.243–70, 1852.243–71 [Amended]**

24. Sections 1852.243–70 and 1852.243–71 are revised to read as follows:

#### **1852.243–70 Engineering change proposals.**

As prescribed in 1843.205–70(a), insert the following clause, modified to suit contract type:

ENGINEERING CHANGE PROPOSALS (MAR 1997)

#### **(a) Definitions.**

*ECP* means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

*MIL-STD-973* means a DOD publication entitled, Military Standard Configuration Control—Engineering Changes, Deviations and Waivers, 15 July 1988.

(b) Either party to the contract may originate ECPs. The originator shall forward proposed ECPs to the Contracting Officer. Unless another process has been approved by the Government or specified by the Contracting Officer, the ECP formats, forms and controls specified in MIL-STD-973 shall be used. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a “not-to-exceed” \_\_\_\_\_ [price or estimated cost] increase or

decrease adjustment amount, if any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the Contractor regarding the “not-to-exceed” \_\_\_\_\_ [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) After submission of a Contractor initiated ECP, the Contracting Officer may require the Contractor to submit the following information:

(1) Cost or pricing data in accordance with FAR 15.804–6 if the proposed change meets the criteria for its submission under FAR 15.804–2; or

(2) Information other than cost or pricing data adequate for Contracting Officer determination of price reasonableness or cost realism. The Contracting Officer reserves the right to request additional information if that provided by the Contractor is considered inadequate for that purpose. If the Contractor claims applicability of one of the exceptions to submission of cost or pricing data, it shall cite the exception and provide rationale for its applicability.

(e) If the ECP is initiated by NASA, the Contracting Officer shall specify the cost information requirements, if any.

(End of clause)

#### **ALTERNATE I (SEPT 1990)**

As prescribed in 1843.205–70(b), add the following paragraph (e), modified to suit contract type, to the basic clause:

(e) If the \_\_\_\_\_ [price of 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].

#### **ALTERNATE II (SEPT 1990)**

As prescribed in 1843.205–70(c), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

### **1852.243–71 Shared savings.**

As prescribed in 1843.7102, insert the following clause:

#### **SHARED SAVINGS (MAR 1997)**

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential

purpose of services to be provided under the contract.

#### **(b) Definitions:**

(1) *Cost savings*, as contemplated by this clause mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this provision, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this provision, Contractor implementation costs, or “implementation costs”, shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this provision, the term Government costs means internal costs of NASA, or any other Government agency, which result directly from development and implementation of the CRP. These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the Cost Reduction Proposal.

(c) General. The Contractor will develop, prepare and submit CRP's with supporting information as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor shall share in any net cost savings realized from approved and implemented CRP's in accordance with the terms of this clause. The Contractor's actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact performance on its contract, including Government and other Contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are

internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) Computation of cost savings. The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) Supporting Information. As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited

number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract, the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submittals.

(f) Administration.

(1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRP's should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the Contractor may, upon concurrence of the Contracting Officers responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings, and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any

portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in advance of the intended action and affording the Contractor an opportunity for discussion.

(g) Limitations. Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

#### 1852.244-70 [Amended]

25. In the introductory text to section 1852.244-70, the citation "1844.170" is revised to read "1844.204-70".

#### 1852.246-70 [Amended]

26. Section 1852.246-70 is revised to read as follows:

#### 1852.246-70 Mission Critical Space System Personnel Reliability Program.

As prescribed in 1846.370(a), insert the following clause:

MISSION CRITICAL SPACE SYSTEM  
PERSONNEL RELIABILITY PROGRAM  
(MAR 1997)

(a) In implementation of the Mission Critical Space System Personnel Reliability Program, described in 14 CFR 1214.5, the Government shall identify personnel

positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2) to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be suitable, competent, and reliable in the performance of their assigned duties in accordance with the screening requirements 14 CFR 1214.5. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

#### 1852.246-71 [Amended]

27. In the introductory text to section 1852.246-71, the citation "1846.470-2(a)" is revised to read "1846.470".

#### 1852.246-73 [Amended]

28. Section 1852.246-73 is revised to read as follows:

#### 1652.246-73 Human Space Flight Item.

As prescribed in 1845.370(b), insert the following clause:

HUMAN SPACE FLIGHT ITEM (MAR 1997)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

"FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY."

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER."

(End of clause)

#### 1852.246-74, 1852.246-75 [Removed]

29. Section 1852.246-74 and 1852.246-75 are removed.

#### 1852.247-70 [Removed]

30. Section 1852.247-70 is removed.

#### 1852.247-72 [Amended]

31. In the introductory text to section 1852.247-72, the citation "1847.305-70(b)" is revised to read "1847.305-70(a)".

#### 1852.247-73 [Amended]

32. In the introductory text to section 1852.247-73, the citation "1847.305-70(c)" is revised to read "1847.305-70(b)".

33. In the clause to section 1852.247-73, the date "(MARCH 1989)" is revised to read "(MAR 1997)", and in paragraph (b), the word "certificate" is revised to read "statement".

[FR Doc. 97-7075 Filed 3-24-97; 8:45 am]

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### 48 CFR Parts 1819 and 1845

#### Revision to the NASA FAR Supplement to Eliminate Non-Statutory Certification Requirements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement to eliminate offeror and contractor certification requirements not mandated by statute.

EFFECTIVE DATE: March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358-0478.

#### SUPPLEMENTARY INFORMATION:

##### Background

NASA published a proposed rule in the December 18, 1996 Federal Register (61 FR 66643-66646) of its intent to delete a number of offeror and contractor certification requirements in the NASA FAR Supplement (NFS). Only editorial comments were received, and these are considered in the final rule. The proposed changes to sections 1819.7211 and 1845.302-73 are incorporated as a final rule without revision.

The changes to the following NFS sections listed in the proposed rule have

already been accomplished via the ongoing NFS rewrite:

1. 1816.303 Cost Sharing Contracts. Certification requirement deleted from renumbered section 1816.303-70 in the October 7, 1996 interim rule (61 FR 52325-52347) and subsequent January 23, 1997 final rule (62 FR 3464-3487).

2. 1823.7002 Responsibility. Section deleted in the October 29, 1996 final rule (61 FR 55753-55764).

3. 1832.7004(b) Contractual Implementation (Milestone Billing). Section deleted in the October 29, 1996 final rule (61 FR 55765-55774).

4. 1834.005-1 Competition. Certification requirement deleted from renumbered Subpart 1834.70 in the January 30, 1997 final rule (62 FR 4466-4492).

5. 1870.102-703, VI, Proposed Submission Information (Investigation Acquisition System). Certification requirement deleted in renumbered Part 1872 in the January 30, 1997 final rule (62 FR 4466-4492).

The changes to the following sections listed in the proposed rule will be accomplished as part of the NFS rewrite in a separate final rule:

1. 1852.223-70, Safety and Health.

2. 1852.247-73, Shipment by Government Bills of Lading.

#### Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This final rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

#### List of Subjects in 48 CFR Parts 1819 and 1845

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1819 and 1845 are amended as follows:

1. The authority citation for 48 CFR Parts 1819 and 1845 continues to read as follows:

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

#### PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

##### 1819.7211 [Amended]

2. In section 1819.7211, paragraph (b)(1) is revised to read as follows:

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

(a) \* \* \*

(b) \* \* \*