

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

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NASA RFP 9-BG-06-2-74P
Nickel-Hydrogen Replacement Battery Orbital Replacement Units (ORUs)
Part Number RE1804-12

(a) FAR CLAUSES

The following contract clauses are incorporated by reference from the Federal Acquisition Regulation with full force and effect, as if set out in full text, and apply to the extent indicated. Unless provided for elsewhere in this contract, in the event that FAR 52.244-6, Subcontracts for Commercial Items (May 2002), is included in the prime contract, only subparagraphs (22), (23), (24), and (38) of this paragraph (a) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, unless otherwise indicated, "Government" and "Contracting Officer" shall mean Buyer, "Contractor" and "Offeror" shall mean Seller, and all reference to "disputes", the "disputes clause", or the "Contract Disputes Act" shall be references to the Disputes clause of the General Provisions of this contract. The full text of a clause may be accessed electronically at this/these address(es): <http://www.arnet.gov/far/>, or <http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>, or <http://farsite.hill.af.mil/>.

- (1) 52.203-3 Gratuities (APR 1984) [excluding subparagraph (c)(2)]. In paragraph (a), Government means United States of America Government or Buyer. In paragraphs (c) and (d), Government means Buyer.
- (2) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.
- (3) 52.203-7 Anti-Kickback Procedures (JUL 1995) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.
- (4) The prime contract contains both FAR 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997) and FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). As an express condition of the award of this subcontract, Seller represents and warrants to Buyer that in relation to the award of the prime contract under which this subcontract is issued, Seller has complied, and will continue to comply with all Procurement Integrity provisions of the Office of Federal Procurement Policy Act of 1988, as amended by the Fiscal Year 1996 National Defense Authorization Act (the Act), 41 USC 423, and its implementing Federal Acquisition Regulations (see FAR 3.104). For violations of the Act by Seller or Seller's subcontractors, as determined by

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notice from the U.S. Government: (1) Seller shall reimburse the Buyer, by contract price adjustment or otherwise, the amount by which Buyer's price or fee is reduced pursuant to FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997), and (2) Buyer shall have the right to terminate this subcontract for default. The rights and remedies of Buyer provided for under this clause are in addition to any other rights or remedies provided by law or under this contract. The rights and obligations set forth in this clause shall survive completion of, final payment under, or termination of this contract.

- (5) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991)
- (6) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997). This clause applies only if this contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Buyer's Authorized Purchasing Representative) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."
- (7) 52.211-5 Material Requirements (AUG 2000).
- (8) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990). THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350). The rating is DO-C9.
- (9) 52.215-2 Audit and Records -- Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000. In this clause, Comptroller General means the Comptroller General of the United States of America Government.
- (10) 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997). This clause applies if the contract exceeds \$550,000.
- (11) 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies if the contract exceeds \$550,000.
- (12) 52.215-14 Integrity of Unit Prices (OCT 1997). Paragraph (b) is deleted. This clause applies only if this contract exceeds \$100,000 and one or more supply items (as opposed to services) are being acquired under this contract.
- (13) 52.215-15, Pension Adjustments and Asset Reversions (DEC 1998). This clause applies only if this contract exceeds \$500,000.
- (14) 52.215-18 Reversion or Adjustment of Plans For Postretirement Benefits (PBR) Other Than Pensions (OCT 1997).

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- (15) 52.215-19 Notification of Ownership Changes (OCT 1997). This clause only applies only if this contract exceeds \$500,000.
- (16) 52.216-7 Allowable Cost and Payment (FEB 2002). This clause only applies if the contract is a cost reimbursement contract using GP4 as the general provisions. This clause never applies if the general provisions are GP1, GP2, or GP3.
- (17) 52.219-8 Utilization of Small Business Concerns (OCT 2000). This clause applies only if this contract exceeds \$100,000. In accordance with FAR 19.708(a)(2), this clause does not apply to performance of the contract, together with all its subcontracts, entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (18) 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (JAN 2002). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer. In accordance with FAR 19.708(a)(2), this clause does not apply to performance of the contract, together with all its subcontracts, entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (19) 52.222-1 Notice to the Government of Labor Disputes (FEB 1997).
- (20) 52.222-19, Child Labor - Cooperation with Authorities and Remedies (DEC 2001). This clause applies only if this contract exceeds \$2,500. Rights of investigation are granted to, and limited to, United States of America Government agencies, departments, bureaus, and instrumentalities.
- (21) 52.222-20 Walsh-Healey Public Contracts Act (DEC 1996). This clause applies if this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45).
- (22) 52.222-21 Prohibition of Segregated Facilities (FEB 1999). This clause does not apply to work performed outside the United States by employees who were not recruited within the United States. In accordance with FAR 22.801, United States means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.
- (23) 52.222-26 Equal Opportunity (APR 2002) [subparagraphs (b)(1) through (11) only.] In accordance with FAR 22.807(b)(2), this clause does not apply to

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work performed outside the United States by employees who were not recruited within the United States. In accordance with FAR 22.801, United States means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

- (24) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract is for \$10,000 or more. In accordance with FAR 22.1308(a)(1)(i), this clause does not apply to work performed outside of the United States by employees recruited outside of the United States. United States includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.
- (25) 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998). This clause applies only if this contract exceeds \$10,000. In accordance with FAR 22.1408(a)(1), this clause does not apply to work performed outside the United States by employees recruited outside of the United States. United States includes the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.
- (26) 52.222-37 Employment Records on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies if the contract equals or exceeds \$25,000.
- (27) 52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)
- (28) 52.227-1 Authorization and Consent (JUL 1995). This clause applies only if this contract exceeds \$100,000.
- (29) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to Buyer.
- (30) 52.227-14 Rights in Data General (JUN 1987).
- (31) 52.227-23 Rights to Proposal Data (Technical) (JUN 1987). In this clause Government means United States of American Government.
- (32) 52.230-2 Cost Accounting Standards (APR 1998). (If the Seller is eligible for modified coverage, and desires to request modified coverage, the Seller should submit a certification to that effect.) This clause does not apply to small businesses, to educational institutions, or to United Kingdom contractors where the work is to be performed substantially in the United Kingdom.

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- (33) 52-230-4 Consistency in Cost Accounting Practices (AUG 1992). This clause applies to United Kingdom contractors where the work is to be performed substantially in the United Kingdom.
- (34) 52.230-5 Cost Accounting Standards - Educational Institutions (APR 1988). This clause applies to educational institutions.
- (35) 52.230-6 Administration of Cost Accounting Standards (NOV 1999). This clause does not apply to small businesses or to United Kingdom contractors where the work is to be performed substantially in the United Kingdom.
- (36) 52.242-13 Bankruptcy (JUL 1995).
- (37) 52.243-7 Notification of Changes (APR 1984). In this clause the terms "Contracting Officer" and "Administrative Contracting Officer" both mean "Buyer's Authorized Purchasing Representative". In paragraph (b), the time period is changed to "within seven (7) calendar days". In paragraph (d), the time period is changed to "within twenty eight (28) calendar days".
- (38) 52.244-5 Competition in Subcontracting (DEC 1996) This clause applies only if this contract exceeds \$100,000.
- (39) 52.244-6 Subcontracts for Commercial Items (MAY 2002)
- (40) 52.245-2 Government Property (Fixed-Price Contracts) (DEC 1989). If the contract is cost reimbursement utilizing GP4 or time-and-material or labor-hour utilizing GP3, then FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) is substituted for this clause and paragraph (g) of FAR 52.245-5 is revised to read as follows:
- (g) Risk of Loss. Seller, upon the delivery to it or acquisition by it of any Government property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this contract, or at such other time as may be directed by Buyer pursuant to paragraph (i) of this clause, Seller shall return such property to Buyer or the Government, as applicable, in as good condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder.
- (40.1) DEFINITIONS. In this clause, the terms "Government-furnished property" and "Government Property" shall include both Boeing furnished and Government-furnished property and all references to title passing to or vesting in the Government shall refer to the United States of America Government. References to an approved program

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or system shall be references to a United States of America Government approved program or system. Contracting Officer shall mean Boeing's Authorized Purchasing Representative and Government shall mean Boeing except as stated above.

- (40.2) **DATE OF THE PRIME CONTRACT.** The date of this prime contract is to be determined; you may assume it is July 29, 2002 for pricing purposes.
- (40.3) **LIMITED RISK OF LOSS REQUESTS.** The Seller shall submit requests for limited risk of loss to the Buyer's Authorized Procurement Representative. Requests for Limited Risk Of Loss must include: (i) a listing, including quantity and unit prices, of all Loss, Damage, or Destruction of Government Property the requesting activity has incurred in three years prior to the date of request, (ii) the total quantity and cost of all Government Property accountable to the Seller's site performing the subcontract at the time of the request, and (iii) a copy of the Seller's most recent Formal Government Property System Analysis or a statement that no such analysis has been conducted at the site involved.
- (40.4) **FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS.** Seller shall provide data on government-owned Seller-held property, in accordance with the provisions at FAR 45.5 and this clause, on an annual basis. Report Government-Owned/Contractor-Held Property, in accordance with the instructions on the Buyer provided form (HOU-BMF-1018) and the direction provided below.
- (40.4.1) The Seller shall submit annually the requested data, in the format requested, with copies of the supporting data utilized to achieve the reported quantities and values. The Seller shall submit the requested data and supporting documentation to the Buyer's Authorized Purchasing Representative, prior to October 15 of each year. Unit Prices of submitted data shall be compliant with NASA FAR Supplement 1845.7101-3.
- (40.4.2) Movement of items of Government-Owned/Contractor Held Property shall comply with the shipment provisions at NASA FAR Supplement 1845.7101-2(a) through (c) and 1845.7102 Sections I through VIII. Property shipped between September 1 and September 30, inclusively, shall be accounted for and reported by the shipping activity, regardless of the method of shipment, unless written evidence of receipt at destination has been received.

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

(40.5) NON-INTERFERENCE, RENT-FREE USAGE AGREEMENTS. Government-Owned or Boeing-Owned/Seller-Held Property shall be used only for the purpose for which it was acquired, fabricated, or provided. The Seller shall submit all requests for non-interference, rent-free usage to the Buyer's Authorized Purchasing Representative. NASA FAR Supplement 1852.245-80 USE OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY ON A NO-CHARGE BASIS (NASA) (MAR 1989) is incorporated into this agreement. The contract specified below is: Contract NAS15-10000 (International Space Station Prime Contract).

(41) 52.246-24 Limitation of Liability - High Value Items (FEB 1997).

(42) 52.246-4 Inspection of Supplies - Fixed Price (AUG 1996)

(43) 52.247-1, Commercial Bill of Lading Notations (APR 1984). This clause only applies to shipments made directly to the United States Government where the Buyer authorizes the supplies to be shipped on a commercial bill of lading.

(44) 52.248-1 Value Engineering (FEB 2000). In paragraph (e), "45 calendar days" and "45-day" is changed to "120 calendar days" wherever it appears. Unless a different figure is stated elsewhere in this agreement, the Seller's shall receive fifty percent (50%) of the award to the Buyer by the United States Government as a result of Seller's Value Engineering proposal.

(b) NASA FAR SUPPLEMENT CLAUSES

The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement with full force and effect, as if set forth in full text, and apply to the extent indicated. Unless provided for elsewhere in this contract, in the event that FAR 52.244-6, Subcontracts for Commercial Items (May 2002), is included in the prime contract, only subparagraphs (10) and (11) of this paragraph (b) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, unless otherwise indicated, "Government" and "Contracting Officer" shall mean Buyer, and

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"Contractor" and "Offeror" shall mean Seller, and all reference to "disputes", the "disputes clause", or the "Contract Disputes Act" shall be references to the Disputes clause of the General Provisions of this contract. The full text of a clause may be accessed electronically at this/these address(es): <http://www.arnet.gov/far/>, <http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>, or <http://farsite.hill.af.mil/>.

- (1) 18-52.204-76 Security Requirements for Unclassified Information Technology Resources (JUL 2001). In paragraph (c), NASA has not yet determined the time period that will be inserted in the "Within ___ days after contract award, the contractor shall submit for NASA approval an IT Security Plan" sentence in the prime contract. Please propose the appropriate number for your company as part of your quotation.
- (2) 18-52.211-70 Packaging, Handling, and Transportation (JUN 2000).
- (3) 18-52.219-75 Small Business Subcontracting Reporting (MAY 1999). This clause applies only if this contract exceeds \$500,000 and Seller is not a Small Business concern. In accordance with NASA FAR Supplement 1819.708-70 and FAR 19.708(a)(2), this clause does not apply to performance of the contract, together with all its subcontracts, entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (4) 18-52.219-76 NASA 8 Percent Goal (JUL 1997) This clause applies only if this contract exceeds \$100,000 and Seller is not a Small Business Concern. In accordance with NASA FAR Supplement 1819.7003, this clause does not apply when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.
- (5) 18-52.223-70 Safety and Health (APR 2002). This clause applies only if this contract exceeds \$1,000,000; requires construction, repairs, or alteration in excess of \$25,000; or involves the use of hazardous materials or operations.
- (6) 1852.223-73 Safety and Health Plan (APR 2002). This clause applies if the contract exceeds \$500,000.
- (7) 1852.223-74 Drug and Alcohol Free Workplace (MAR 1996).
- (8) 1852.223-75 Major Breach of Safety or Security (FEB 2002). In this clause, "Government investigation" shall mean "Government or Buyer investigation".
- (9) 1852.225-70 Export Licenses (FEB 2002)

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- (10) 18-52.228-72 Cross-Waiver of Liability for Space Shuttle Services (SEP 1993).
 - (11) 1852.228-76 Cross Waiver of Liability for Space Station Activities (DEC 1994).
 - (12) 1852.243-71 Shared Savings (MAR 1997). In paragraph (f) (2), "60 days" is changed to "120 calendar days" wherever it appears. Unless a different figure is stated elsewhere in this agreement, the Seller's shall receive fifty percent (50%) of the award to the Buyer by the United States Government as a result of Seller's Cost Reduction Proposal.
 - (13) 1852.245-80 USE OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY ON A NO-CHARGE BASIS (NASA) (MAR 1989). The contract specified below is: Contract NAS15-10000 (International Space Station Prime Contract)
 - (14) 1852.246-73 Human Space Flight Item (MAR 1997)
- (e) PRIME CONTRACT FLOWDOWN PROVISIONS (Houston 09/24/2002)

This contract may be amended to the extent necessary to incorporate additional provisions required to meet Buyer's obligations under the prime contract to which this order is charged. In the event that both (1) FAR 52.244-6, Subcontracts for Commercial Items (May 2002), is included in the prime contract and (2) all goods and services to be provided under this contract are "commercial items", as that term is defined in the Federal Acquisition Regulations, then Buyer's use of this clause is limited to additional provisions required to meet Buyer's obligations under the prime contract when acquiring "commercial items". Amendments imposed under the authority of this clause unilaterally by Buyer entitle Seller to request an equitable adjustment, as if they had been imposed under the Changes clause, and in accordance with Changes clause procedures on requesting an equitable adjustment. Seller may use the Disputes clause if Seller feels that Buyer used this clause to impose a amendment beyond the scope of this clause.

- (f) RESERVED
- (g) RESERVED
- (h) RESERVED
- (i) RESERVED
- (j) RESERVED