



## Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

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### CLAUSE 90G (4/6/01) NCC8-190/FUTURE X GOVERNMENT CONTRACT REQUIREMENTS

(a) The following contract clauses are incorporated by reference from the Code of Federal Regulations, and apply to the extent indicated. In all of the following clauses, "Contractor," "Offeror," and "Recipient" shall mean Seller.

- (1) 14 CFR 1274.905 Rights in Data (FEB 1996). This clause applies only if this contract involves experimental, developmental, or research work.
- (2) 14 CFR 1274.906 Designation of New Technology Representative & Patent Representative (FEB 1996). For the purposes of facilitating the administration of the Patent Rights - Retention by the Recipient (Large Business) clause or the Patent Rights - Retention by the Recipient (Small Business) clause, as applicable, the following named representatives by title are hereby designated by the Grant Officer to administer such clause: New Technology Representative - MSFC New Technology Representative, Office Code C030, MSFC AL 35812; Patent Representative - Chief, Intellectual Property Counsel, Office Code CC01, MSFC AL 35812.
- (3) 14 CFR 1274.926 Clean Air - Water Pollution Control Acts (FEB 1996). This clause applies only if this contract exceeds \$100,000.
- (4) 14 CFR 1274.927 Debarment and Suspension and Drug-Free Workplace (FEB 1996). This clause applies only if this contract is a "lower tier covered transaction" as that term is defined at 14 CFR1265.110 (a)(1)(ii).
- (5) 14 CFR 1274.929 Restrictions on Lobbying (FEB 1996). This clause applies only if this contract exceeds \$100,000.
- (6) 14 CFR 1274.930 Travel and Transportation (FEB 1996). This clause applies only if travel will be funded by the Government.
- (7) 14 CFR 1274.932 Retention and Examination of Records (FEB 1996)

(b) Cost Principles & Accounting Standards. The expenditure of Government funds by Seller and the allowability of costs recognized by NASA as a resource contribution shall be governed by the FAR cost principles, 48 CFR Part 31. Seller's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(c) Publications & Reports: Non-Proprietary Research Results. All information disseminated as a result of this contract shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number. Prior approval, obtained through Buyer, is required only where Seller requests that the results of the research be published in a NASA scientific or technical publication; two copies of each draft publication shall accompany the approval request. Seller shall submit to Buyer the following technical reports (containing full bibliographic references, abstracts of publications, and lists of other media in which the research was discussed): (1) a performance report for every year of the contract, submitted 30 days before the anniversary date of the contract, describing research accomplished during the report period; (2) a

summary of research, due 45 days after the end of the performance period of the contract, summarizing the entire research accomplished during the duration of the contract. Performance reports and summaries of research shall display the following on the first page: contract number; title and number of the cooperative agreement between Buyer and NASA; type of report; period covered by the report; Seller's name and address.

(d) Inventory Listings of Equipment. An annual inventory listing of Government and Buyer furnished equipment will be submitted to Buyer by October 10 of each year. A final inventory report of Government and Buyer furnished equipment, and Seller acquired equipment, is due 30 days after the end of the performance on this contract.

(e) Cross?Waiver of Liability for Space Shuttle Services

(1) As prescribed by regulation (14 CFR Part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross?waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. This cross?waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

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

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

(B) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(C) "Party" means the Recipient and NASA;

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

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

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

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

(F) "Related entity" means:

- (i) A party's Contractors or subcontractors at any tier;
- (ii) A party's users or customers at any tier; or
- (iii) A Contractor or subcontractor of a party's user or customer at any tier.

(3) Cross Waiver of Liability.

(A) Each party agrees to a cross-waiver of liability pursuant to which each party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

- (i) The other party;
- (ii) Any person or entity who has signed an agreement with NASA that includes a Shuttle flight;
- (iii) A related entity of a party, person, or entity in (3)(A)(i) or (3)(A)(ii); and
- (iv) The employees of any of the entities identified in (3)(A)(i) through (3)(A)(iii) of this provision.

(B) Each party shall extend the cross-waiver of liability as set forth in paragraph (3)(A) of this clause to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (3)(A)(i) through (3)(A)(iv) of this provision. (C) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(D) Notwithstanding the other paragraphs of this provision, this cross-waiver of liability shall not be applicable to:

- (i) Claims between any party and its own related entities or claims between its own related entities;
- (ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
- (iii) Claims for damage caused by willful misconduct;
- (iv) Intellectual property claims;
- (v) Claims between the parties based on the express provisions of this cooperative agreement; and
- (vi) Claims for damage based on a failure of the parties or their related entities to flow down this

cross?waiver.

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

(f) Equal Employment Opportunity. Seller shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(g) Copeland "Anti?Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). If this contract is in excess of \$50,000 for construction or repair, Seller shall comply with the Copeland "Anti?Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or subRecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

(h) Contract Work Hours and Safety Standards Act (40 U.S.C. 327?333). If this contract is in excess of \$2,000 for construction contracts or in excess of \$50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers, Seller shall comply with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327?333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, Seller shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(i) Rights to Inventions Made Under a Contract or Agreement. If this contract involves the performance of experimental, developmental, or research work the Federal Government and Buyer hereby assert their rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(j) Foreign National Employee Investigative Requirements. Seller shall submit to Buyer a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (FBI Card FD-258) for each foreign national employee requiring access to Buyer's or NASA's installations at least 100 days prior to the estimated duty date. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office. Buyer will request on Seller's behalf permission for access from the NASA Installation Security Office.

(k) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. (This certification is made by submitting a response to a solicitation that incorporates clause 90G or by accepting a contract that incorporates clause 90G.)

(1) The definitions and prohibitions contained in the clause, at 14 CFR 1271, New Restrictions on Lobbying, are hereby incorporated by reference in paragraph (2) of this certification.

(2) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 --

(A) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(B) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(C) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(3) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(1) Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions. (This certification is made by submitting a response to a solicitation that incorporates clause 90G or by accepting a contract that incorporates clause 90G. For additional information regarding this certification, see 14 CFR 1265, Appendix B.)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.