



## Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

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### **CLAUSE 91A (4/6/01)** **NAS4-00041** **GOVERNMENT CONTRACT REQUIREMENTS**

(a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for elsewhere in this contract, only subparagraphs (18), (19), (20), and (28) 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, "Contractor" and "Offeror" shall mean Seller.

- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.
- (2) 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.
- (3) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold or recover from Seller the amount of the reduction.
- (4) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991)
- (5) 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) 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."
- (6) 52.204-2 Security Requirements (AUG 1996) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified information is required.
- (7) 52.211-5 New Materials (AUG 2000)
- (8) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
- (9) 52.215-2 Audit and Records -- Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

(10) 52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

(11) 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

(12) 52.215-19 Notification of Ownership Changes (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

(13) 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997). This clause applies only if this contract exceeds \$500,000. "Contracting Officer" shall mean Buyer in subparagraph (a).

(14) 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (OCT 1999)

(15) 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (OCT 1999). 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.

(16) 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (JUL 1995). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

(17) 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

(18) 52.222-26 Equal Opportunity (FEB 1999) [subparagraphs (b)(1) through (11)]

(19) 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998). This clause applies only if this contract is for \$10,000 or more.

(20) 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$10,000.

(21) 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (JAN 1999). This clause applies only if this contract is for \$10,000 or more.

(22) 52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)

(23) 52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)

(24) 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.

(25) 52.227-14 Rights in Data -- General (JUN 1987) -- As modified by NASA FAR Supplement 18-52.227-14. This clause applies only if data will be produced, furnished, or acquired under this contract.

(26) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if this contract requires work on a Government installation.

(27) 52.244-5 Competition in Subcontracting (DEC 1996)

(28) 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1998)

(29) 52.245-2 Government Property (DEC 1989)

(30) 52.245-18 Special Test Equipment (FEB 1993)

(31) 52.248-1 Value Engineering (FEB 2000) [excluding subparagraph (f)]. This clause applies only if this contract is for \$100,000 or more. "Contracting Officer" shall mean Buyer. If a Value Engineering Change Proposal is accepted by the Government, Seller's share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that Buyer receives from the Government. Seller's negotiated share of net acquisition savings or collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. Buyer's payments to Seller under this clause are conditioned upon Buyer's receipt of authorization for such payments from the Government.

(b) The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.

(1) 18-52.204-76 Security Requirements for Unclassified Automated Information Technology Resources (JUL 2000). This clause applies only if this contract requires unescorted or unsupervised physical access or electronic access to limited or controlled areas, systems, programs and data as set forth in this contract.

(2) 18-52.208-81 Restrictions on Printing and Duplicating (AUG 1993). This clause applies only if this contract involves a requirement for printing and/or duplicating/copying in excess of the limits specified in paragraph (c) of the referenced clause.

(3) 18-52.210-75 Packaging and Marking (SEP 1990), Alternate I (SEP 1990)

(4) 18-52.219-74 Use of Rural Area Small Businesses (SEP 1990). This clause applies only if this contract offers subcontracting possibilities.

(5) 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

(6) 18-52.219-76 NASA 8 Percent Goal (JUL 1997). This clause applies only if Seller is not a small business.

(7) 18-52.223-70 Safety and Health (SEP 1993). 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.

(8) 18-52.227-72 Designation of New Technology Representative and Patent Representative (JUL 1997). Insert in paragraph (a): New Technology Representative and Patent Representative: NASA Dryden Flight Research Center, ATTN: Ms. Yvonne Kellogg, PO Box 273, MS D-4839A, Edwards, CA 93523-0273.

(9) 18-52.227-14 Rights in Data - General (OCT 1995). This clause applies only if data will be produced, furnished, or acquired under this contract except contracts for basic or applied research with universities or colleges.

(10) 18-52.228-75 Minimum Insurance Coverage (OCT 1988). This clause applies only if this contract requires work on a Government installation.

(11) 18-52.235-70 Center for Aerospace Information (NOV 1992)

(12) 18-52.237-70 Emergency Evacuation Procedures (DEC 1988). This clause applies only if this contract requires work on a Government installation.

(13) 18-52.242.73 NASA Contractor Financial Management Reporting (JUL 2000). This clause applies only if this contract is a cost-type, price redetermination or FPI contract. "Contracting Officer" shall mean Buyer's Authorized Procurement Representative.

(14) 18-52.243-70 Engineering Change Proposal (FEB 98)

(15) 18-52.244-70 Geographic Participation in the Aerospace Program (APR 1985). This clause applies only if this contract is for \$100,000 or more.

(16) 18-52.245-70 Acquisition of Centrally Reportable Equipment (JUL 1997) [excluding paragraph (b)(3)]. "Contracting Officer" shall mean Buyer. If the equipment is to be acquired as Special Test Equipment (STE), Seller shall submit the applicable request 75 days in advance of the date Seller intends to acquire the equipment. No later than 30 September of each year, Seller will provide Buyer a list of all property acquired under this clause. The list will include at a minimum: (1) part number; (2) serial number; (3) modification number, if any; (4) nomenclature; (5) acquisition cost; (6) acquisition date; and (7) the date of the prior year's list.

(17) 18-52.245-73 Financial Reporting of Government-Owned/Contractor-Held Property (SEP 2000). Seller will submit annual reports to Buyer no later than October 15.

#### (c) Cost Accounting Standards

If clause 383 or 384 is incorporated in this contract, the FAR designation for the "Administration of Cost Accounting Standards" clause is hereby changed from FAR 52.230-5 (AUG 1992) to FAR 52.230-6 (NOV 1999) and the dates of the "Cost Accounting Standards" and "Disclosure and Consistency of Cost Standards" clauses are hereby changed from AUG 1992 to APR 1998.

#### (d) Cost and Pricing Data

If clause 307 or 308 is incorporated in this contract, the following changes are made:

(1) In paragraph (a): Delete "FAR 52.215-25" and substitute in lieu thereof "FAR 52.215-13 (OCT 1997)." Delete the words "in effect on the date of this contract." In clause 307 only, delete "FAR 52.215-24" and substitute in lieu

thereof "FAR 52.215-12 (OCT 1997)."

(2) In paragraph (b)(1): Delete "FAR 15.804-2, 15.804-4, 15.804-6, 15.806-1, and 15.806-2, in effect on the date of this contract" and substitute in lieu thereof "FAR 15.403-4, 15.403-5, 15.404-3, and 15.406-2, in effect on February 1, 2001."

(3) In paragraph (b)(3): Delete "FAR 52.215-22(d) or 52.215-23(e)" and substitute in lieu thereof "FAR 52.215-10(d) (OCT 1997) or 52.215-11(e) (OCT 1997)."

(4) In paragraph (b)(5): Delete "FAR 52.215-22(c)(1)" and substitute in lieu thereof "FAR 52.215-10(c)(1) (OCT 1997)."

#### (e) Packaging and Marking

(1) Seller shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rates.

(2) Seller's markings on shipping containers shall be clearly legible from a distance of 36 inches. Seller may mark by stencil, rubber stamp, or lacquer over a coated gummed label.

(3) Seller shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.

(4) Seller's packaging specifications or procedures may be utilized if they are (i) not in conflict with cited NASA specifications and (ii) approved in writing by the Contracting Officer. In any contract between NASA's specifications and procedures and Seller's specifications and procedures, the NASA documents cited in this clause shall take precedence.

(5) Seller shall place identical requirements on all subcontracts.

#### (f) Security Registration and Identification Badges

Seller's employees engaged in work at Dryden Flight Research Center are required to be registered and badged by the Center's Security Office and to follow all security regulations and requirements.

#### (g) Management and Protection of Data

(1) In the performance of this contract it is anticipated that Seller may have access to, be furnished, use, or generate the following types of data (recorded information):

(A) data submitted to the Government with limited rights or restricted rights notices;

(B) data of third parties which the Government has agreed to handle under protective arrangements; and

(C) data generated by or on behalf of the Government that the Government intends to control the use of dissemination thereof.

(2) In order to provide management appropriate for protecting interests of the Government and other owners of such data, Seller agrees with respect to data in category (A) above, and with respect to any data in categories (B) and (C) when so identified by Buyer, to:

(A) use and disclose such data only to the extent necessary to perform the work required under this contract, with particular emphasis on restricting disclosure of this data to those persons who have a definite need for the data in order to perform under this contract;

(B) not reproduce the data unless reproduction of the data is specifically permitted elsewhere in this contract or by Buyer Authorized Procurement Representative;

(C) refrain from disclosing the data to third parties without the written consent of Buyer's Authorized Procurement Representative; and

(D) return or deliver the data, including all copies thereof, to Buyer upon request.

(h) Notice of Claims and Demands. (This clause is incorporated in Buyer's contract with NASA and is incorporated here in accordance with the requirement stated in paragraph (3) below.)

(1) The Contractor shall forward to the Government Contracting Officer and to the NASA-Dryden Chief Counsel, within thirty (30) days from receipt thereof, a copy of any complaint filed in court or any other written notice, made or served upon, or submitted to, the Contractor or its subcontractors, agents, or employees, containing a claim or demand for money or damages, arising out of the performance of this contract, against the Contractor, its subcontractors, agents, or employees, or any named Insured. The Contractor, its subcontractors and agents, shall not, without first notifying the Government Contracting Officer and NASA-Dryden Chief Counsel, engage in discussions or negotiations relative to considering ascertaining, settling, or adjusting any claim or demand against the Contractor, subcontractor, or any named Insured arising from the performance of work or services under the Contract. Should the Contractor or its subcontractors fail to notify the Government within 30 days of notice of a claim or demand, or engage in discussions or negotiations as described, without first notifying the Government Contracting Officer and NASA-Dryden Chief Counsel, such discussions or negotiations may constitute a material breach of contract.

(2) The Contractor's or subcontractor's failure to notify the Government, as required above, will constitute an irrebuttable presumption and the Contractor's or subcontractor's binding admission both (i) that the claim does not arise from the negligence or willful misconduct of the Government and (ii) that either the Contractor, its subcontractor, the claimant, any of their agents or employees (other than the Government), is responsible for the alleged injury or damage.

(3) The Contractor will put notice of this clause (Notice of Claims and Demands) in all its subcontracts entered into in performance of the work. Failure to do so, such that a subcontractor or other agent of the Contractor may be excused from the irrebuttable presumption and binding admission described above, will result in the Contractor's absolute obligation to indemnify the Government for all costs, attorney's fees, and damages to the Government arising therefrom.