

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

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NAS5-30722
MEDIUM EXPENDABLE LAUNCH VEHICLE SERVICES

- (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 (20), (21), (22), and (34) 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) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (JAN 1990). This clause applies only if this contract exceeds \$100,000.
 - (4) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JAN 1990). 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."
 - (5) 52.204-2 Security Requirements (APR 1984) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified material is required.
 - (6) 52.210-5 New Material (APR 1984). "Contracting Officer" shall mean Buyer.
 - (7) 52.210-7 Used or Reconditioned Material, Residual Inventory and Former Government Surplus Property (APR 1984). "Contracting Officer" shall mean Buyer.
 - (8) 52.211-15 Defense Priority and Allocation Requirements (MAY 1986)
 - (9) 52.215-1 Examination of Records by Comptroller General (APR 1984). This clause applies only if this contract exceeds \$10,000.

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- (10) 52.215-2 Audit and Records -- Negotiation (AUG 1996). 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.
- (11) 52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$500,000. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."
- (12) 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$500,000. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."
- (13) 52.215-27 Termination of Defined Benefit Pension Plans (SEP 1989). This clause applies only if under this contract certified cost or pricing data is required and 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.
- (14) 52.215-30 Facilities Capital Cost of Money (SEP 1987). This clause applies only if Seller includes facilities capital cost of money as a proposed cost of this contract.
- (15) 52.215-31 Waiver of Facilities Capital Cost of Money (SEP 1987). This clause applies only if Seller did not include facilities capital cost of money as a proposed cost of this contract.
- (16) 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FEB 1990)
- (17) 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (FEB 1990). 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.

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- (18) 52.219-13 Utilization of Women-Owned Small Businesses (AUG 1986)
- (19) 52.222-20 Walsh-Healey Public Contracts Act (APR 1984). This clause applies only if this contract exceeds \$10,000.
- (20) 52.222-26 Equal Opportunity (APR 1984) [subparagraphs (b)(1) through (11)]
- (21) 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984). This clause applies only if this contract is for \$10,000 or more.
- (22) 52.222-36 Affirmative Action for Handicapped Workers (APR 1984). This clause applies only if this contract exceeds \$2,500.
- (23) 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988). This clause applies only if this contract is for \$10,000 or more.
- (24) 52.223-2 Clean Air and Water (APR 1984). This clause applies only if this contract exceeds \$100,000.
- (25) 52.223-3 Hazardous Material Identification and Material Safety Data (DEC 1989). This clause applies only if Seller will deliver hazardous materials.
- (26) 52.225-3 Buy American Act - Supplies (JAN 1989)
- (27) 52.227-1 Authorization and Consent (APR 1984), Alternate I (APR 1984)
- (28) 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.
- (29) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (JUN 1989). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business or nonprofit organization.
- (30) 52.227-14 Rights in Data (General) (JUN 1987). As modified by NFS 18-27.409(e).
- (31) 52.228-5 Insurance - Work on a Government Installation (SEP 1989). This clause applies only if this contract requires work on a Government installation.

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- (32) 52.230-6 Administration of Cost Accounting Standards (APR 1996). This clause applies only if clause 3050 or 3051 is incorporated in this contract. Add "Buyer and the" before "Contracting Officer" in paragraph (f).
 - (33) 52.244-5 Competition in Subcontracting (APR 1984)
 - (34) 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1995)
 - (35) 52.246-25 Limitation of Liability -- Services (APR 1984). This clause applies only if this contract exceeds \$25,000.
 - (36) 52.248-1 Value Engineering (MAR 1989) [excluding subparagraph (f)]. This clause applies only if this contract is \$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) 18-52.204-70 NASA Report of Subcontracts (NOV 1992). This clause [excluding paragraph (e)] applies only if this contract exceeds \$100,000.
 - (2) 18-52.223-70 Safety and Health (DEC 1988). This clause applies only if (i) this contract exceeds \$1,000,000, (ii) construction, repair, or alteration in excess of \$25,000 is involved, or (iii) it involves the use of hazardous materials or operations.
 - (3) 18-52.223-71 Frequency Authorization (DEC 1988). This clause applies only if this contract requires the development, production, construction, testing or operation of a device for which a radio frequency authorization is required.
 - (4) 18-52.227-70 New Technology (APR 1988). This clause applies only if this contract is for experimental, developmental or research work and Seller is not a small business or nonprofit organization.
 - (5) 18-52.227-14 Rights in Data - General (JUN 1987). 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.

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- (6) 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.
- (7) 18-52.245-70 Acquisition of Centrally Reportable Equipment (MAR 1989) [excluding paragraph (b)(3)]. In this clause, "Contracting Officer" shall mean Buyer. Seller will report to Buyer all Centrally Reportable Equipment (CRE) in accordance with the terms of this clause. A listing of all equipment, including CRE items, CRE type items costing less than \$1,000.00, all development items, no matter what the value, and Special Tooling will be provided to Buyer on 30 March and 30 September of each year. The listing will exclude completed end item deliverables under the contract, leased items, and any software/manuals. Seller will ensure that these requirements are included in all lower-tier subcontracts.
- (8) 18-52.245-73 Financial Reporting of Government-Owned/Contractor-Held Property (MAR 1989). Seller will submit annual reports to Buyer no later than July 15.

(c) Seller Conduct While on Government Premises

If a portion or all of the effort required to be accomplished under this contract is to be at a Government installation, the rights of ingress and egress to the Government site for Seller personnel shall be made available as required. While on Government premises, Seller shall comply with the rules, regulations, and procedures governing the conduct of personnel and the operation of the facility. Such rules and regulations are generally set forth in Government or local installation management instructions, handbooks, or announcements (available at installation where access is required).

(d) Safety and Health

The GSFS Safety Officer, Code 205.2, is designated as the Contracting Officer's representative for the purpose of NASA FAR Supplement 18-52.223-70, Safety and Health, of this contract.

In addition to compliance with all Federal, State, and local laws applicable to safety and health [paragraph (a) of the Safety and Health clause], Seller shall also comply with NHB 1700.1 (V1-A), through Change No. 1, dated April 11, 1984. Seller shall also comply with the Safety and Health Plan incorporated as TBP in this contract.

"Accidents, incidents, and exposure" in paragraph (c) of the Safety and Health clause are further defined in Chapter 2 of NHB 1700.1 (V1-A). Notification shall be verbal and immediately provided to the Contracting Officer's representative for Type A, B, and C mishaps; for mission failures; and for test failures which have a monetary impact of \$25,000 or more. A written report shall be provided within five days of the occurrence. Immediate notification is not required for incidents and

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potential mishaps. However, a written report shall be provided within seven days of such occurrences.

Seller shall promptly notify the Contracting Officer in writing, with a copy to the GSFS Safety Officer, Code 205.1, of the nonconformance of any Government-furnished property with the requirements of this provision.

(e) Radioactive Materials

Seller shall notify Buyer in writing, prior to the delivery of any item or completion of services called for under this contract, of those items/services which contain radioactive material(s) or the capability of producing ionizing radiation requiring licensing under the Atomic Energy Act of 1954, and the Code of Federal Regulations, Title 10. The notification shall be made with sufficient leadtime for Government personnel to complete any required licensing prior to delivery, without interfering with existing contractual delivery dates. Additionally, the notification shall specify the part(s), parts of items which contain radioactive materials, description of such materials, name and strength of the isotope, manufacturer of the radioactive materials, and any other data which will notify users of the hazards involved.

All items, parts of subassemblies which contain radioactive materials, and all containers in which such items, parts, or subassemblies are delivered to the Government shall be clearly marked and labeled as required by Code of Federal Regulations, Title 10. All interior packages and shipping containers for articles and materials classified as "dangerous" or "restricted" under provisions of the Interstate Commerce Commission (ICC), Civil Aeronautics Board (CAB), or U.S. Coast Guard Regulations will be marked, regardless of exemption for mode of transportation, with proper shipping identification of the item.

Pursuant to the requirements of this article, Seller shall provide to Buyer, in writing, information that shows Seller's facilities are properly licensed through appropriate State and/or Nuclear Regulatory Commission activities.

(f) If this contract requires work on a Government installation, Buyer Clause 333, "Insurance - Minimum Requirements," is incorporated herein by reference.

(g) Designation of New Technology Representative and Patent Representative

(1) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights - Retention by the Contractor (Short Form)," whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

New Technology R. Dennis Marchart
Representative Goddard Space Flight Center
Greenbelt, MD 20771

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Patent R. Dennis Marchart
Representative Goddard Space Flight Center
Greenbelt, MD 20771

- (2) Reports of reportable items and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights - Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer through Buyer. The respective responsibilities and authorities of the above-named representatives are set forth in 18-27.375-3 of the NASA FAR Supplement.

(h) Cost Accounting Standards

- (1) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1996.
- (2) The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1996.