

typographical and administrative errors in the December 19, 1996 final rule. The effective date of the December 19, 1996 rule is corrected from December 19, 1996 to February 17, 1997.

**EFFECTIVE DATE:** The effective date of the December 19, 1996 rule (61 FR 6711) is corrected from December 19, 1996 to February 17, 1997. The remaining corrections in this action are effective February 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Peter Tsirigotis, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (for technical matters) (202-233-9620); or Dwight C. Alpern (same address) (for legal matters) (202-233-9151).

**SUPPLEMENTARY INFORMATION:** On December 19, 1996 (61 FR 6711), EPA promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. Subsequent to publication of the December 19, 1996 rule, EPA identified several inadvertent typographical and administrative errors in the December 19, 1996 document. Today's action corrects those errors.

The December 19, 1996 document incorrectly stated that the effective date of the rule would be the date of publication. As stated elsewhere in the preamble of December 19, 1996 rule, EPA submitted the rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller of the General Accounting Office under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The effective date is being revised to February 17, 1997, which is 60 days after the December 19, 1996 publication date, as required by SBREFA.

The several other corrections made by today's action involve correcting the amendatory instructions in the December 19, 1996 rule. For example, the amendatory instruction adding defined terms to the definitions section (§ 76.2) included terms for which no definitions were actually provided or intended to be provided. The incorrectly listed terms are removed from the amendatory instructions.

The remaining corrections involve typographical or similar errors in the rule language itself. For example, the rule provisions establishing cutoffs for application of the emission limitations for cyclone and wet bottom boilers expressed the cutoffs in terms of Maximum Continuous Steam Flow at 100% of Load in lb/hr but the term, "Maximum Continuous Steam Flow at 100% Load", is defined as being

expressed in thousands of lb/hr. The rule provisions are corrected to express the cutoffs in thousands of lb/hr.

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by SBREFA, EPA submitted a report containing this document and any other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this document in today's Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: January 13, 1997.

Mary D. Nichols,  
*Assistant Administrator for Air and Radiation.*

Accordingly, for the reasons set out above, the publication on December 19, 1996 of the final rule at 61 FR 67112 is corrected as follows:

1. On page 67112, in the first column, the **EFFECTIVE DATE** is corrected to read "February 17, 1997".

2. On page 67162, in the first and second columns, the amendatory instruction 2 is corrected to read "Section 76.2 is amended by revising the definitions of 'coal-fired utility unit' and 'wet bottom' and adding, in alphabetical order, definitions for 'arch-fired boiler', 'combustion controls', 'Maximum Continuous Steam Flow at 100% of Load', 'non-plug-in combustion controls', 'plug-in combustion controls', and 'vertically fired boiler', to read as follows:".

**§ 76.5 [Corrected]**

3. On page 67162, in the third column, the amendatory instruction 3 is corrected to read "Section 76.5 is amended by removing paragraph (g).".

**§ 76.6 [Corrected]**

4. On page 67163, in the first column, § 76.6(a)(2), line 5 is corrected to read

"1060, in thousands of lb/hr. The NO<sub>x</sub> emission control".

5. On page 67163, in the first column, § 76.6(a)(3), line 5 is corrected to read "than 450, in thousands of lb/hr. The NO<sub>x</sub> emission".

6. On page 67163, in the first column, § 76.6(b), line 5 is corrected to end with the words "part 75 of this chapter." The remainder of the line becomes the first line of the amendatory instruction 5.

**§ 76.16 [Corrected]**

7. On page 67163, in the third column, § 76.16(c)(1), line 2 is corrected to read "draft decision on:".

*Appendix B to Part 76 [Corrected]*

8. On page 67164, in the third column, the amendatory instruction 9, line 9 is corrected to read "effectiveness in each place that the words appear and adding, in their" and the amendatory instruction 9, line 20 is corrected to read "the heading of section 2 and the".

[FR Doc. 97-1641 Filed 1-22-97; 8:45 am]

BILLING CODE 6560-50-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1815, 1816, 1852, and 1870

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

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

**ACTION:** Final rule.

**SUMMARY:** As part of the National Performance Review initiative to streamline and clarify regulations, NASA issued an interim rule (61 FR 52325-52347, October 7, 1996) as corrected (61 FR 56271, October 31, 1996) which revised part 1815, Contracting by Negotiation, and part 1816, Types of Contracts; made conforming changes to part 1852, Solicitation Provisions and Contract Clauses; and removed subpart 1870.3, NASA Source Evaluation. The interim rule is being adopted as a final rule with minor editorial revisions.

**EFFECTIVE DATE:** January 23, 1997.

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

**SUPPLEMENTARY INFORMATION:** Background

No comments were received by the closing date in response to the interim rule. Several comments were received after the closing date, primarily

addressing the changes in NASA's source selection process. Specifically, the comments requested NASA: Eliminate the competitive range numerical goal of three proposals (1815.609(a)); clarify that the restrictions of the Procurement Integrity Act apply before a blackout notice is issued (1815.408-70); clarify that the evaluation of relevant experience and past performance for new businesses may include an evaluation of the company's principals (1815.605-70(d)); clarify the definition of proposal weakness (1815.610(c)(2)(A)); and eliminate the requirement that source selection statements be publicly releasable (1815.611(d)(iii)). NASA considered these comments and believes the sections in question are both adequately stated and integral to the Agency's acquisition streamlining initiatives. Accordingly, no changes are made to the interim rule as a result of public comment.

However, the following editorial and administrative changes are made to ensure consistency among the rewritten and renumbered NFS parts:

1. In 1815.407-70(a), the reference to "issued pursuant to subpart 1870.1" is deleted.

2. In 1815.602(b) (ii) and (iii), the parenthetical cross references are corrected.

3. In 1815.708-70, the title is changed to "NASA contract clauses".

4. In 1815.902(a)(2)(G), the redundant language after "unsuitable" is deleted.

5. In 1816.404-270(b)(3), the reference to "CPAF" is a typographical error and is corrected to "cost-plus-fixed-fee (CPFF)."

6. In 1852.216-76, the NFS reference in the footnote is corrected to "1816.404-272(a)."

7. In 1852.216-77(c)(4), the phrase "cumulative provisional fee payments" in the second sentence is corrected to "cumulative interim (and provisional, if applicable) fee payments" to reflect the policy in 1816.404-2.

8. In 1852.216-88, footnote (5) is deleted and corrected to "(5) Insert the appropriate amount in accordance with 1816.402-270(e)."

In addition, other miscellaneous revisions are made to correct printing errors in the published interim rule.

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 and 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 economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *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 1815, 1816, 1852 and 1870

Government procurement.  
Thomas S. Luedtke,  
*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1815, 1816, 1852, and 1870 are amended as follows:  
1.-2. Part 1815 is revised to read as follows:

## PART 1815—CONTRACTING BY NEGOTIATION

### Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

Sec.

1815.405 Solicitations for information or planning purposes.

1815.405-70 Draft requests for proposals.

1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1815.406-2 Part I—The Schedule.

1815.406-5 Part IV—Representations and instructions.

1815.406-70 Page limitations.

1815.406-71 Installation reviews.

1815.406-72 Headquarters reviews.

1815.407 Solicitation provisions.

1815.407-70 NASA solicitation provisions.

1815.408 Issuing solicitations.

1815.408-70 Blackout notices.

1815.412 Late proposals, modifications, and withdrawals of proposals.

1815.412-70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.

1815.413 Disclosure and use of information before award.

1815.413-2 Alternate II.

1815.413-270 Appointing non-Government evaluators as special Government employees.

### Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

1815.503 General.

1815.504 Advance guidance.

1815.506 Agency procedures.

1815.506-70 Relationship of unsolicited proposals to NRAs.

1815.508 Prohibitions.

1815.508-70 NASA prohibitions.

1815.509 Limited use of data.

1815.509-70 Limited use of proposals.

1815.570 Foreign proposals.

### Subpart 1815.6—Source Selection

1815.601 Definitions.

1815.602 Applicability.

1815.605-70 Evaluation factors and subfactors.

1815.608 Proposal evaluation.

1815.608-70 Identification of unacceptable proposals.

1815.608-71 Evaluation of a single proposal.

1815.609 Competitive range.

1815.610 Written or oral discussions.

1815.611 Best and Final Offers.

1815.612-70 NASA formal source selection.

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1815.804 Cost or pricing data and information other than cost or pricing data.

1815.804-1 Prohibition on obtaining cost or pricing data.

1815.804-170 Acquisitions with the Canadian Commercial Corporation (CCC).

1815.804-2 Requiring cost or pricing data.

1815.805-5 Field pricing support.

1815.807 Pre-negotiation objectives.

1815.807-70 Content of the pre-negotiation position memorandum.

1815.807-71 Installation reviews.

1815.807-72 Headquarters reviews.

1815.808 Price negotiation memorandum.

### Subpart 1815.9—Profit

1815.902 Policy.

1815.903 Contracting officer responsibilities.

1815.970 NASA structured approach for profit or fee objective.

1815.970-1 General.

1815.970-2 Contractor effort.

1815.970-3 Other factors.

1815.970-4 Facilities capital cost of money.

1815.971 Payment of profit or fee under letter contracts.

### Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Notification to successful offeror.

1815.1004-70 Debriefing of offerors—Major System acquisitions.

### Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

1815.7002 Synopses of solicitations and contracts.

1815.7003 Contract clause.

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

## PART 1815—CONTRACTING BY NEGOTIATION

### Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

**1815.405 Solicitations for information or planning purposes.**

**1815.405-70 Draft requests for proposals.**

(a) Except for acquisitions described in 1815.602(b), contracting officers shall

issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed \$1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(b) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(c) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(d) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(e) The procurement officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

**1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).**

**1815.406-2 Part I—The Schedule.**

(NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

**1815.406-5 Part IV—Representations and instructions.**

(NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision. Although offerors should be provided the maximum flexibility in developing their proposals, contracting officers shall specify any information and standard formats required for the efficient and impartial evaluation of proposals.

**1815.406-70 Page limitations.**

(a) Technical and contracting personnel will mutually agree on page limitations for their respective portions

of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½"×11", with at least one inch margins on all sides, using not smaller than 12 characters per inch or equivalent type. Foldouts count as an equivalent number of 8½"×11" pages. The metric standard format most closely approximating the described standard 8½"×11" size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will mutually agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of contents, and cost/price information, shall not exceed 500 pages using the page definition of 1815.406-70(a). Firm page limitations shall also be established for Best and Final Offers (BAFOs), if requested. The appropriate BAFO page limitations should be determined by considering the complexity of the acquisition and the extent of any written or oral discussions. The same BAFO page limitations shall apply to all offerors. Pages submitted in excess of the specified limitations for the initial proposal and BAFO will not be evaluated by the Government and will be returned to the offeror.

**1815.406-71 Installation reviews.**

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting, called a Solicitation Review Board (SRB), as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.612-70, the SEB

shall review and approve the RFP prior to issuance.

**1815.406-72 Headquarters reviews.**

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology that are not included in the RFP itself should also be provided.

**1815.407 Solicitation provisions.**

(NASA supplements paragraphs (c) and (d))

(c)(6) The provision at FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals shall not be used in solicitations for the Small Business Innovation Research (SBIR) or Small Business Technology Transfer Programs, or for broad agency announcements listed in 1835.016. See instead 1815.407-70(a).

(d)(4) The contracting officer shall insert FAR 52.215-16 Alternate II in all competitive negotiated solicitations.

**1815.407-70 NASA solicitation provisions.**

(a) The contracting officer shall insert the provision at 1852.215-73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), in lieu of the provision at FAR 52.215-10 in Announcements of Opportunity and in Small Business Innovation Research (SBIR) and Small Business Technology Transfer solicitations. (See 1815.412.)

(b) The contracting officer shall insert a provision substantially as stated at 1852.215-74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government.

(c) The contracting officer shall insert the provision at 1852.215-75, Expenses Related to Offeror Submissions, in all requests for proposals.

(d) The contracting officer shall insert the provision at 1852.215-77, Pre-proposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a pre-proposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(e) The contracting officer shall insert the clause at 1852.214-71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(f) The Contracting Officer shall insert the clause at 1852.214-72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(g) The Contracting Officer shall insert the provision at 1852.214-81, Proposal Page Limitations, in all competitive requests for proposals.

(h) The Contracting Officer shall insert the provision at 1852.215-82, Offeror Oral Presentations, in competitive requests for proposals when the Government intends to allow offerors to make oral presentations prior to commencement of the Government's formal evaluation.

#### **1815.408 Issuing solicitations.**

##### **1815.408.70 Blackout notices.**

(a) Upon release of the formal RFP, the Contracting Officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the Contracting Officer or other authorized representative. This procedure is commonly known as a "blackout notice" and shall not be imposed prior to release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(b) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal offeror proprietary data.

##### **1815.412 Late proposals, modifications, and withdrawals of proposals.**

##### **1815.412-70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.**

For BAAs listed in 1835.016, SBIR Phase I and Phase II solicitations, and STTR solicitations—

(a) Proposals, or modifications to them, received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the submission of the late proposal or modification, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering the proposal.

(b) The selection official or a designee shall determine whether to consider the proposal.

(c) Offerors may withdraw proposals any time before award, provided the conditions in paragraph (b) of the provision at 1852.215-73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), are satisfied.

##### **1815.413 Disclosure and use of information before award.**

##### **1815.413-2 Alternate II.**

(NASA supplements paragraphs (a), (e), and (f))

The alternate procedures at FAR 15.413-2 shall be used for NASA acquisitions in lieu of those prescribed at FAR 15.413-1. These procedures, as implemented by this section, apply both before and after award.

(a) During evaluation proceedings, NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(e) The notice at FAR 15.413-2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.402 regarding release of the names of firms submitting offers.)

(f)(i) Except as provided in paragraph (f)(ii) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. This authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(ii) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for overall conduct of the evaluation. The determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(A) NASA Announcements of Opportunity proposals;

(B) Unsolicited proposals;

(C) NASA Research Announcement proposals;

(D) SBIR and STTR proposals.

(iii) The written approvals required by paragraphs (f) (i) and (ii) of this section

shall be provided to the contracting officer before the release of the proposal information. As a minimum, the approval shall:

(A) Identify the precise proposal information being released;

(B) Identify the person receiving the proposal information and evidence of their appointment as a special government employee or a statement of the applicable exception (see 1815.413-270);

(C) Provide a justification of the need for disclosure of the proposal information to the non-Government evaluator(s); and

(D) Provide a statement that a signed "Agreement and Conditions for Evaluation of Proposals," in accordance with paragraph (f)(2) of this section, will be obtained prior to release of the proposal to the evaluator.

(iv) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (f)(i) and (f)(ii) of this section.

(f)(2) The NASA official approving the disclosure of any proposal information to a non-Government evaluator, including employees of JPL, shall, prior to such disclosure, require each non-Government evaluator to sign the following "Agreement and Conditions for Evaluation of Proposals."

Agreement and Conditions for Evaluation of Proposals (October 1996)

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. This limitation does not apply to information that is otherwise available without restrictions to the Government, another competing contractor, or the public.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413-2(e) and NFS 1815.413-2(e)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information for evaluation.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. At any time the recipient

becomes aware that he or she or a person with a close personal relationship (household family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

Signature: \_\_\_\_\_

Name typed or printed: \_\_\_\_\_

Date: \_\_\_\_\_

[End of agreement]

**1815.413-270 Appointing non-Government evaluators as special Government employees.**

(a) Except as provided in paragraph (c) of this section, non-Government participants in proposal evaluation proceedings, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a Special Government employee is a separate action from the approval required by paragraph 1815.413-2(f) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The Field Installation personnel office when the release of proposal information is to be made by the Field Installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) NASA Announcements of Opportunity proposals;

(2) Unsolicited proposals;

(3) NASA Research Announcement proposals; and

(4) SBIR and STTR proposals.

**Subpart 1815.5—Unsolicited Proposals**

**1815.502 Policy.**

(NASA supplements paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

**1815.503 General.**

(NASA supplements paragraph (e))

(e) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

**1815.504 Advance guidance.**

(NASA supplements paragraph (b))

(b) The Headquarters Office of Procurement (Code HK) is responsible for preparing for public use a brochure titled "Guidance for the Preparation and Submission of Unsolicited Proposals," which shall be provided without charge by the Office of Procurement and other NASA officials in response to requests for proposal submission information. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. Code HK is responsible for internal distribution of the brochure.

**1815.506 Agency procedures.**

(NASA supplements paragraph (a))

(a)(i) NASA Headquarters and each NASA field installation shall designate an organizational entity as its unsolicited proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (larger business, small business, university, or nonprofit institution).

**1815.506-70 Relationship of unsolicited proposals to NRAs.**

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see

1835.016-70), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

**1815.508 Prohibitions.**

(NASA supplements paragraph (b))

(b) FAR 15.508(b) shall not apply to NASA; see instead 1815.508-70.

**1815.508-70 NASA prohibitions.**

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413-2 and 1815.413-2.

**1815.509 Limited use of data.**

FAR 15.509 shall not apply to NASA. See instead 1815.509-70.

**1815.509-70 Limited use of proposals.**

(a) The provision at FAR 52.215-12, Restriction on Disclosure and Use of Data, is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by paragraph (a) of this section, the procedures of FAR 15.413-2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413-2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413-2(f) and 1815.413-2.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413-2(g) apply.

**1815.570 Foreign proposals.**

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

**Subpart 1815.6—Source Selection**

**1815.601 Definitions.**

(NASA supplements paragraphs (1) and (2))

(1) The source selection authority (SSA) is the Agency official responsible

for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities:

(i) Approve the evaluation factors, subfactors, and elements, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104-2) prior to release of the RFP, or delegate this authority to appropriate management personnel;

(ii) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(iii) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(2) The SSA shall be established at the lowest reasonable level for each acquisition. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

#### 1815.602 Applicability.

(NASA supplements paragraphs (a) and (b))

(a)(i) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(A) Acquisitions of \$50 million or more—in accordance with FAR 15.6 and this subpart.

(B) Other acquisitions—in accordance with FAR 15.6 and this subpart except section 1815.612-70.

(ii) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.6 and this subpart are not applicable to acquisitions conducted under the following procedures:

(i) MidRange (see part 1871).

(ii) Announcements of Opportunity (see part 1872).

(iii) NASA Research Announcements (see 1835.016-70).

(iv) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(v) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

#### 1815.605-70 Evaluation factors and subfactors

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Relevant Experience and Past Performance. Evaluation factors may be further defined by subfactors. Although discouraged, subfactors may

be further defined by elements. Evaluation subfactors and any elements should be structured to identify significant discriminators, or “key swingers”—the essential information required to support a source selection decision. Too many subfactors and elements undermine effective proposal evaluation. All evaluation subfactors and any elements should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.608(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to four. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) Although discouraged, elements that further define the content of each subfactor may be identified. Elements, if used, shall not be numerically weighted and scored. The total number of elements is limited to eight. Any Mission Suitability elements shall be identified in the RFP.

(4) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Million Suitability scores.

(c) *Cost/Price factor.* This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs, prices. The Cost/Price factor is not numerically weighted or scored.

(d) *Relevant Experience and Past Performance factor.* (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition. The Relevant Experience and Past Performance factor is not numerically weighted or scored.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that

can be used to evaluate their relevant experience and past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems and terminations.

(3) The Contracting Officer may start collecting past performance data prior to proposal receipt. One method for initiating the past performance evaluation early is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

#### 1815.608 Proposal evaluation.

(NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any failures to meet any terms and conditions of the RFP;

(ii) All strengths and weaknesses, classified as major or minor to further underscore discriminators among proposals;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactor and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The adjectival rating of the Relevant Experience and Past Performance evaluation factor; and

(vi) Any technical, schedule, and cost risk. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, etc., or as a result of the cost, schedule and performance impacts associated with these approaches. Risk evaluations must consider the probability of success, the impact of

failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths; weaknesses and numerical/adjectival ratings. Identified risk areas and the potential for cost impact shall be considered in the cost or price evaluation.

(1) Cost or price evaluation.

(A) In accordance with 1815.804-1, cost or pricing data shall not be requested in competitive acquisitions. Only the minimal information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested.

(B) When contracting on a firm fixed price basis, the contracting officer shall not request any cost information, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

(C) When contracting on a basis other than firm fixed price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(a) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from the offeror's proposal.

(b) The differences in business methods, operating procedures, and practices as they impact cost.

(c) A level of confidence in the probable cost assessment for each proposal.

(d) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.608(a)(3)(B).

(E) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(a)(2) Past performance evaluation.

(A) The Relevant Experience and Past Performance evaluation assesses the contractor's performance under previously awarded contracts. It should evaluate the company, not the individuals, involved with contract performance. Relevant Experience and Past Performance is not numerically scored, but is assigned an adjectival rating.

(B) The evaluation may be limited to specific areas of past performance

considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) The evaluation may consider past performance data provided by offerors and data from other sources. Questionnaires and interviews may be used to solicit assessments of the offeror's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(2) (iii) Firms without relevant experience or a past performance record shall not be given a proposal deficiency or weakness (see 1815.610) and shall be given a neutral rating. If the adjectival rating system of 1815.608(a)(3)(A) is used for the Relevant Experience and Past Performance factor, a rating of "Good" shall be assigned in such cases.

(3) Technical Evaluation.  
(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent .....	A comprehensive and thorough proposal of exceptional merit with one or more major strengths. No weaknesses or only minor weaknesses exist.	91-100
Very Good .....	A proposal which demonstrates overall competence. One or more major strengths have been found, and strengths outbalance any weaknesses that exist.	71-90
Good .....	A proposal which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response.	51-70
Fair .....	A proposal that has one or more weaknesses. Weaknesses have been found that outbalance any strengths that exist.	31-50
Poor .....	A proposal that has one or more major weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to address..	0-30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(a) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty

(i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(b) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(c) Affect a significant number of points in order to encourage realistic pricing.

(d) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardward development	Point adjustment
+/- 5 percent	+/- 30 percent ..	0
+/- 6 to 10 percent.	+/- 31 to 40 percent.	-50
+/- 11 to 15 percent.	+/- 41 to 50 percent.	-100
+/- 16 to 20 percent.	+/- 51 to 60 percent.	-150
+/- 21 to 30 percent.	+/- 61 to 70 percent.	-200
+/- more than 30 percent.	+/- more than 70 percent.	-300

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

**§ 1815.608-70 Identification of unacceptable proposals.**

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

**1815.608-71 Evaluation of a single proposal.**

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the Source Selection Authority shall direct the contracting officer to:

(1) Award without discussions provided the contracting officer determines that adequate price competition exists (see FAR 15.804-1(b)(1)(ii));

(2) Award after negotiating a mutually acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.804-1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.608-71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

**1815.609 Competitive range.**

(NASA supplements paragraphs (a))

(a) Proposals shall not be included in the competitive range when they do not have a reasonable chance of selection. To reduce unnecessary expense to both

offerors and NASA, a total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

**1815.610 Written or oral discussions.**

(NASA supplements paragraph (c))

(c)(2)(A) The contracting officer shall identify, and give offerors a reasonable opportunity to address, all weaknesses that have an adverse impact on the evaluation. Weaknesses are defined as deficiencies (see FAR 15.601) and other proposal inadequacies. Weaknesses may include all proposal areas that are inadequate for evaluation, contain contradictory statements, or strain credibility. However, minor irregularities, informalities, or apparent clerical mistakes are not considered weaknesses. They may be identified to offerors through the clarification technique defined in FAR 15.601, rather than discussions as contemplated in this section.

(B) The contracting officer shall advise an offeror if, during written or oral discussions, an offeror introduces a new weakness. The offeror can be advised during the course of the discussions or as part of the request for BAFO.

(C) The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer should question inadequate, conflicting, unrealistic or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a "bottom line" is necessary.

(c)(3)(A) The contracting officer shall discuss contract terms and conditions so that a "model" contract can be sent to each offeror with the request for BAFO. Any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's "model" contract. These items are not to be discussed with, or proposed to, other offerors. If the offeror

declines to include these strengths in its "model" contract, the Government evaluators should reconsider their characterization as strengths.

(B) In no case shall the contracting officer relax or amend RFP requirements for any offeror, without amending the RFG and permitting the other offerors an opportunity to propose against the relaxed requirements.

**1815.611 Best and Final Offers.**

(NASA supplements paragraphs (b), (c) and (d))

(b) The request for BAFOs shall also:

(i) Identify for any remaining weaknesses.

(ii) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(iii) Require offerors to complete and execute the "model" contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(iv) Caution offerors against unsubstantiated changes to their proposals; and

(v) Establish a page limit for BAFOs.

(c)(i) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of \$50 million or more.

(ii) Approval of the procurement officer is required for all other acquisitions.

(d)(i) Proposals are rescored based on BAFO evaluations. Scoring changes between initial and BAFO proposals shall be clearly traceable.

(ii) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(iii) Prior to award, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: The acquisition; the SEB evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Relevant Experience and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions



(see 1815.1004-70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in debriefing unsuccessful offerors and shall be provided to debriefed offerors upon request.

(iv) Once the selection decision is made, the contracting officer shall, without post-selection negotiations, award the contract.

**1815.612-70 NASA formal source selection.**

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.602(a)(i)(A).

(b) General. The SEB assists the SSA in decisionmaking by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) Designation. (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with NFS 1815.413-2.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) Organization. (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels/consultants (as described in 1815.612-70(d)(4) and (5)), to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or

consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors, subfactors, and elements, and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 20 people, unless approved in writing by the procurement officer.

(e) Voting members. (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of a NASA SEB.

(3) The SEB shall review the findings of committees, panels or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals.

Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) Ex officio members.

(1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in 1815.612-70(f)(3) is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) Evaluation plan. (1) The SEB evaluation plan consists of 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 of each offeror's proposal.

(2) The evaluation plan shall be approved by the SEB (and other personnel designated in accordance with installation procedures) before the formal RFP is issued.

(h) Evaluation. (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths or weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment, consistent with the approved evaluation plan. SEB minutes shall reflect this evaluation process.

(i) SEB presentation. (1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the major strengths and weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors, subfactors, and elements; the major strengths and weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated

individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, elements, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the Field Installation Director and to the Official-in-Charge of the cognizant headquarters Program Office.

(j) *Recommended SEB presentation format*—(1) *Identification of the acquisition*. Identifies the installation, the nature of the services or hardware to be procured, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background*. Identifies any earlier phases of a phased acquisition or, as in the case of the continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, subfactors, and elements*. Explains any special standards of responsibility and the evaluation factors, subfactors, and elements. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Relevant Experience and Past Performance evaluations.

(4) *Sources*. Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings*. Lists the initial and final Mission Suitability

ratings and scores, the offerors' proposed costs/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Strengths and weaknesses of offerors*. Summarizes the SEB's findings, using the following guidelines:

(i) Present only the major strengths and weaknesses of individual offerors.

(ii) Directly relate the strengths and weaknesses to the evaluation factors, subfactors, and elements.

(iii) Indicate the significance of major strengths and weaknesses.

(iv) Indicate the results and impact, if any, of written and/or oral discussions and BAFOs on ratings and scores.

(7) *Final mission suitability ratings and scores*. Summarizes the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation*. Summarizes proposed costs/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Relevant experience and past performance*. Reflects the summary conclusions, supported by specific case data, with particular emphasis on exemplary or inferior performance and its potential bearing on the instant acquisition.

(10) *Special interest*. Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could have an effect on the selection decision.

(k) A source selection statement shall be prepared in accordance with 1815.611(d)(iii). For installation selections, the Field Installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

#### **Subpart 1815.7—Make-or-Buy Programs**

##### **1815.704 Items and work included.**

Make-or-buy programs should not include items or work efforts estimated to cost less than \$500,000.

##### **1815.706 Evaluation, negotiation, and agreement.**

(NASA supplements paragraph (b))

(b) The make-or-buy program review by the installation's small and disadvantaged business utilization specialist and the SBA representative should be concurrent with the contracting officer's review. When urgent circumstances preclude this or if the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit copies to the specialist and the representative.

**1815.708 Contract clause.**

**1815.708-70 NASA contract clauses.**

(a) The contracting officer shall insert the provision at 1852.215-78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

**Subpart 1815.8—Price Negotiation**

**1815.804 Cost or pricing data and information other than cost or pricing data.**

**1815.804-1 Prohibition on obtaining cost or pricing data.**

(NASA supplements paragraph (b))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception. In such cases, information other than cost or pricing data may be requested to the extent necessary to ensure price reasonableness and assess cost realism.

(2)(iii) The contracting officer shall document the comparison of the item with the catalog or market priced commercial item, including the technical similarities and differences and the price justification methodology.

(5) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HC).

**1815.804-170 Acquisitions with the Canadian Commercial Corporation (CCC).**

NASA has waived the requirement for the submission of cost or pricing data when contracting with the CCC. This waiver applies through March 31, 1999. The CCC will provide assurance of the fairness and reasonableness of the proposed prices, and will also provide for follow-up audit activity to ensure that excess profits are found and refunded to NASA. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to permit any required Government cost/price analysis.

**1815.804-2 Requiring cost or pricing data.**  
(NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of price agreement.

**1815.805-5 Field pricing support.**

(NASA supplements paragraph (a))

(a)(1)(A) The threshold for obtaining a field pricing report for cost reimbursement contracts is \$1,000,000.

(B) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(C) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(D) When the threshold for requiring field pricing support is met and the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

**1815.807 Prenegotiation objectives.**

(NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under competitive negotiated procedures.

**1815.807-70 Content of the prenegotiation position memorandum.**

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.808 and 1815.808). In addition to the information described in FAR 15.807 and, as appropriate, 15.808(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOD, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.808(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government); and

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) *Cost analysis.* For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the

contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective;

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.806-2(a), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, and unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, cost risk, and so forth, as applicable.

(e) *Negotiation approval sought.* The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

#### **1815.807-71 Installation reviews.**

Each contracting activity shall establish a formal system for the review of prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of

these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

#### **1815.807-72 Headquarters reviews.**

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

#### **1815.808 Price negotiation memorandum.** (NASA supplements paragraphs (a) and (b))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.808 shall be reflected in the evaluation and selection documentation to the extent applicable.

(b) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, subcontractors; wage rate determinations; or the current status of the contractor's systems).

#### **Subpart 1815.9—Profit**

##### **1815.902 Policy.**

(NASA supplements paragraph (a)).

(a)(1) The NASA structured approach for determining profit or fee objectives, described in 1815.970, shall be used to determine profit or fee objectives for

conducting negotiations in those acquisitions that require cost analysis, except as indicated in paragraph (a)(2) of this section.

(2) The use of the NASA structured approach for profit or fee is not required for:

- (A) Architect-engineer contractors;
- (B) Management contracts for operation and/or maintenance of Government facilities;
- (C) Construction contracts;
- (D) Contracts primarily requiring delivery of material supplied by subcontractors;
- (E) Termination settlements;
- (F) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit/fee analysis as an aid in arriving at an appropriate fee arrangement); and
- (G) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

##### **1815.903 Contracting officer responsibilities.**

(NASA supplements paragraph (d))

(d)(1)(ii) In architect-engineer contracts, the price or estimated cost and fee for services other than the production and delivery of designs, plans, drawings, and specifications, are not subject to the 6 percent limitation set forth in FAR 15.903(d)(1).

##### **1815.970 NASA structured approach for profit or fee objective.**

###### **1815.970-1 General.**

(a) The NASA structured approach for determining profit or fee objectives is a system of assigning weights to cost elements and other factors to calculate the objective. Contracting officers shall use NASA Form 634 to develop the profit or fee objective and shall use the weight ranges listed after each category and factor on the form after considering the factors in 1815.970-2 through 1815.970-4. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.807-70(d)(3).

(b)(1) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (b)(2) of this section. (It is NASA policy not to pay profit or fee on contracts with educational institutions.)

(2) For contracts with nonprofit organizations under which profits or

fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

- (i) Tax position benefits;
- (ii) Granting of financing through letters of credit;
- (iii) Facility requirements of the nonprofit organization; and
- (iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

**1815.970-2 Contractor effort.**

(a) This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. The suggested cost categories under this factor are for reference purposes only. The format of individual proposals will vary, but these broad categories provide a sample structure for the evaluation of all categories of cost. Elements of cost shall be separately listed under the appropriate category and assigned a weight from the category range.

(b) Regardless of the categories of cost defined for a specific acquisition, neither the cost of facilities nor the amount calculated for the cost of money for facilities capital shall be included as part of the cost base in column 1. (a) in the computation of profit or fee.

(c) Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(1) Material acquisition (subcontracted items, purchased parts, and other material). (i) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard or near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(ii) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit/fee evaluation. If intracompany

transfers are accepted at price in accordance with FAR 31.205-26(e), they shall be evaluated as a single element under the material acquisition category. For other intracompany transfers, the constituent elements of cost shall be identified and weighted under the appropriate cost category, i.e., material, labor, and overhead.

(2) Direct labor (engineering, service, manufacturing, and other labor). (i) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit/fee weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(ii) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(iii) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined in this section will be applied.

(3) Overhead and general management (G&A). (i) Analysis of overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for the rates proposed in future years.

(ii) Contracting officers should also consider the historical accuracy of the contractor's proposed overheads as well as the ability to control overhead pool expenses.

(iii) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(4) Other costs. Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

**1815.970-3 Other factors.**

(a) *Cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit/fee objectives.

(1) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profit/fee in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(2) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0-to-3 percent range for cost-reimbursement contracts and 3-to-7 percent range for fixed-price contracts.

(i) Within the ranges set forth in paragraph (a)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(3) The cost risk arising from contract type is not the only form of cost risk to consider.

(i) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weight should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(ii) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit/fee weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(b) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(1) To evaluate how facilities contribute to the profit/fee objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit/fee. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive

a correspondingly lower profit/fee. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit/fee objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit/fee need not be adjusted.

(2) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(c) *Performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(d) *Subcontract program management.* Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee.

(e) *Federal socioeconomic programs.* In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

(f) *Special situations.* (1) Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed

dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit/fee objective.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

#### **1815.970-4 Facilities capital cost of money.**

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205-10(a)(2).

(b) CAS 417, Cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

#### **1815.971 Payment of profit or fee under letter contracts.**

NASA's policy is to pay profit or fee only on definitized contracts.

#### **Subpart 1815.10—Preward, Award, and Postaward Notifications, Protests, and Mistakes**

##### **1815.1003 Notification to successful offeror.**

The reference to notice of award in FAR 15.1003 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed:

##### **1815.1004-70 Debriefing of offerors—Major System acquisitions.**

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely

disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

#### Subpart 1815.70—Ombudsman

##### 1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

##### 1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contacting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

##### 1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

3. Part 1816 is revised to read as follows:

### PART 1816—TYPES OF CONTRACTS

#### Subpart 1816.2—Fixed-Price Contracts

Sec.

- 1816.202 Firm-fixed-price contracts.
- 1816.202–70 NASA contract clause.
- 1816.203 Fixed-price contracts with economic price adjustment.
- 1816.203–4 Contract clauses.

#### Subpart 1816.3—Cost-Reimbursement Contracts

- 1816.303–70 Cost-sharing contracts.
- 1816.306 Cost-plus-fixed-fee contracts.
- 1816.307 Contract clauses.
- 1816.307–70 NASA contract clauses.

#### Subpart 1816.4—Incentive Contracts

- 1816.402 Application of pre-determined, formula-type incentives.
- 1816.402–2 Technical performance incentives.
- 1816.402–270 NASA technical performance incentives.
- 1816.404 Cost-reimbursement incentive contracts.
- 1816.404–2 Cost-plus-award-fee (CPAF) contracts.
- 1816.404–270 CPAF contracts.
- 1816.404–271 Base fee.
- 1816.404–272 Award fee evaluation periods.

- 1816.404–273 Award fee evaluations.
- 1816.404–274 Award fee evaluation factors.
- 1816.404–275 Award fee evaluation scoring.
- 1816.405 Contract clauses.
- 1816.405–70 NASA contract clauses.

#### Subpart 1816.5—Indefinite-Delivery Contracts

- 1816.504 Indefinite quantity contracts.
- 1816.505 Ordering.
- 1816.505–70 Task Ordering.
- 1816.506–70 NASA contract clause.

#### Subpart 1816.6—Time-and-Materials, Labor-House, and Letter Contracts

- 1816.603 Letter contracts.
  - 1816.603–370 Approvals.
- Authority: 42 U.S.C. 2473(c)(1).

### PART 1816—TYPES OF CONTRACTS

#### Subpart 1816.2—Fixed-Price Contracts

##### 1816.202 Firm-fixed-price contracts.

##### 1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

##### 1816.203 Fixed-price contracts with economic price adjustment.

##### 1816.203–4 Contract clauses. (NASA supplements paragraphs (a) and (d)).

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2 through 52.216–4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216–2 through 52.216–4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HC, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Associate Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

#### Subpart 1816.3—Cost-Reimbursement Contracts

##### 1816.303–70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service

activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

##### 1816.306 Cost-plus-fixed-fee contracts. (NASA supplements paragraph (d)).

(d) *Completion and term forms.*

(4) Term form contracts are incompatible with performance base contracting (PBC) and should not be used with PBC requirements.

##### 1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

(b) In solicitations and contracts containing the clause at FAR 52.216–8,

Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216-13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records—Negotiation.

#### **1816.307-70 NASA contract clauses.**

(a) The contracting officer shall insert the clause at 1852.216-73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303-70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216-81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216-87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216-7, Allowable Cost and Payment, or FAR clause 52.216-13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216-89, Assignment and Release Forms.

#### **Subpart 1816.4—Incentive Contracts**

##### **1816.402 Application of pre-determined, formula-type incentives.**

##### **1816.402-2 Technical performance incentives.**

##### **1816.402-270 NASA technical performance incentives.**

(a) A performance incentive shall be included in all contracts where the primary deliverable(s) is (are) hardware and where total estimated cost and fee is greater than \$25 million unless it is determined that the nature of the

acquisition (for example, commercial off-the-shelf computers) would not effectively lend itself to a performance incentive. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under \$25 million at the discretion of the procurement officer. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and

unpaid and promptly remit it to the contractor. The exclusion at FAR 16.405(e)(3) does not apply to decisions made as to the amount(s) of positive or negative incentive.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules.

(1) The sum of the maximum positive performance incentive and other fixed or earnable fees on the contract shall not exceed the limitations in FAR 15.903(c).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

##### **1816.404 Cost-reimbursement incentive contracts.**

##### **1816.404-2 Cost-plus-award-fee (CPAF) contracts.**

##### **1816.404-270 CPAF contracts.**

(a) For purposes of this subsection, "performance based contracting" means effort which can be contractually defined so that the results of the contractor's effort can be objectively measured in terms of technical and



quality achievement, schedule progress or cost performance. "Nonperformance based contracting" means contractor effort that cannot be objectively measured but is evaluated based on subjective, qualitative assessments (e.g., controlling changes or interfacing with other agencies, contractors and international organizations).

(b)(1) Normally, award fee incentives are not used when contract requirements can be defined in sufficient detail to allow for performance based contracting. If incentives are considered necessary, objectively measured incentives as described in FAR 16.402 are preferred.

(2) Award fee incentives may be used as follows:

(i) As a CPAF contract where a cost reimbursement contract is appropriate and none of the requirements can be defined to permit performance based contracting;

(ii) As a CPAF line item for nonperformance based requirements in conjunction with a non-CPAF line item(s) for performance based requirements. In this instance, fees for the performance based and nonperformance based requirements shall be developed separately IAW FAR 15-9 and 1815.9; and

(iii) Under a performance based contract when it is determined to be necessary to motivate the contractor toward exceptional performance (see FAR 16.404-2(b)(ii)) and the increased level of performance justifies the additional administrative expense. When an award fee incentive is used in this instance, the basic contract type shall be other than CPAF (e.g., CPIF or FPIF). The potential award fee should not exceed 10 percent of the total contract fee or profit and shall not be used to incentivize cost performance.

(3) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

(c) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should be used on contracts with a total estimated cost and fee greater than \$2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

#### **1816.404-271 Base fee.**

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.404-273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final product/results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with a performance based contract structure, such as an incentive fee arrangement.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.404-273 and 1816.404-275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "poor/unsatisfactory", all provisional base fee payments shall be refunded to the Government.

#### **1816.404-272 Award fee evaluation periods.**

(a) Award fee evaluation periods should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

#### **1816.404-273 Award fee evaluations.**

(a) Award fee evaluations are either interim or final. On contracts where the contract deliverable is the performance of a service over any given time period,

contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) On other contracts, such as those for end item deliverables where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition, interim evaluations are done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making interim award fee payments. These interim payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payment.

(c) Provisional award fee payments, i.e., payments made within evaluation periods, may be included in the contract and should be negotiated on a case-by-case basis. The amount of the provisional award fee payment is determined by applying the lesser of the prior period's interim evaluation score (see 1816.404-275) or 80 percent of the fee allocated to the current period. The provisional award fee payments are superseded by the fee determinations made at the conclusion of each award fee performance period.

(d) The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due to the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

#### **1816.404-274 Award fee evaluation factors.**

(a) Explicit evaluation factors shall be established for each award fee period.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an

individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors. Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater (see 1816.404-275). An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.404-274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) When an AF arrangement is used in conjunction with a performance based contract structure (see 1816.404-270(b)(2)(iii)), the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g., CPIF, FPIF).

(f) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(g) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

#### **1816.404-275 Award fee evaluation scoring.**

(a) A scoring system of 0-100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) *Excellent* (100-91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) *Very good* (90-81): Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) *Good* (80-71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) *Satisfactory* (70-61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not

substantial, effects on overall performance.

(5) *Poor/Unsatisfactory* (less than 61): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated "Excellent," the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0-100 according to the ratings defined in 1816.404-275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80x60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

#### **1816.405 Contract clauses.**

##### **1816.405-70 NASA contract clauses.**

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverable is the performance of a service. When provisional award fee payments are authorized, use Alternate I.

(b) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract.

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I.

(f) As provided at 1816.402-270, the contracting officer shall insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

#### **Subpart 1816.5—Indefinite-Delivery Contracts**

##### **1816.504 Indefinite quantity contracts. (NASA supplements paragraph (a))**

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

##### **1816.505 Ordering. (NASA supplements paragraphs (a) and (b))**

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(4) The Agency and installation ombudsmen designated in accordance with 1815.70 shall review complaints from contractors on task order contracts and delivery order contracts.

##### **1816.505-70 Task ordering.**

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.404-270(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause

at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843-70.

##### **1816.506-70 NASA contract clause.**

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NHB 9501.2), use the clause with its Alternate I.

#### **Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

##### **1816.603 Letter contracts.**

##### **1816.603-370 Approvals.**

(a) All requests for authority to issue a letter contract shall include the following:

(1) Proposed contractor's name and address.

(2) Location where contract is to be performed.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed.

(10) A statement that the definitive contract will contain all required clauses or identification of specific clause deviations that have been approved.

(11) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(12) The definitization schedule described in FAR 16.603-2(c) expected to be negotiated with the contractor.

(b) Requests for authority to issue letter contracts having an estimated definitive contract amount equal to or greater than the Master Buy Plan submission thresholds of 1807.7101 (or modifications thereto) shall be signed by the procurement officer and submitted to the Associate Administrator for Procurement (Code HS) for approval.

(c) Authority to approve the issuance of letter contracts below the Master Buy Plan submission thresholds specified in 1807.7101 is delegated to the procurement officer.

(d) Any modification of an undefinitized letter contract approved by a procurement officer in accordance

with paragraph (c) of this section that increases the estimated definitized contract amount to or above the Master Buy Plan submission thresholds must have the prior approval of the Associate Administrator for Procurement (Code HS).

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

4. The authority citation for part 1852 continues to read as follows:

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

##### **1852.215-73, 1852.215-74, 1852.215-75 [Revised]**

5-6. Sections 1852.215-73, 1852.215-74 and 1852.215-75 are revised to read as follows:

##### **1852.215-73 Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs).**

As prescribed in 1815.407-70(a), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs)

(October 1996)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice of telegram (Including mailgram) received at any time before award. Proposals maybe withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

##### **1852.215-74 Alternate Proposals.**

As prescribed in 1815.407-70(b), insert the following provision:

Alternate Proposals

(October 1996)

(A) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, it accepted, would result in a contract with terms varying in one or more material respects from those

contained in this solicitation, and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interest, the Government may modify its solicitation in a manner appropriate to incorporate the changes but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation.

(End of provision)

**1852.215-75 Expenses Related to Offeror Submissions.**

As prescribed in 1815.407-70(c), insert the following provision:

**Expenses Related to Offeror Submissions**

(December 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk.

(End of provision)

**1852.215-77, 1852.215-78, 1852.215-79 [Revised]**

7.-8. Sections 1852.215-77, 1852.215-78 and 1852.215-79 are revised to read as follows:

**1852.215-77 Preproposal/Pre-bid Conference.**

As prescribed in 1815.407-70(d), insert the following provision:

**Preproposal/Pre-Bid Conference**

(December 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

- Date:
- Time:
- Location:
- Other Information, as applicable:  
[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

**1852.215-78 Make or Buy Program Requirements.**

As prescribed in 1815.708-70(a), insert the following provision:

**Make or Buy Program Requirements**

(December 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

**1852.215-79 Price Adjustment for "Make-or-Buy" Changes.**

As prescribed in 1815.708-70(b), insert the following clause:

**Price Adjustment for "Make-or-Buy" Changes**

(December 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination
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(End of clause)

**1852.215-81, 1852.215-82 [Revised]**

9. Section 1852.215-81 and 1852-215-82 are revised to read as follows:

**1852.215-81 Proposal Page Limitations.**

As prescribed in 1815.407-70(g), insert the following provision:

**Proposal Page Limitations**

(January 1994)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)
_____	_____
_____	_____
_____	_____

(b) A page is defined as one side of sheet, 8½" x 11", with at least one inch margins on all sides, using not smaller than 12 characters per inch (or equivalent) type.

Foldouts count as an equivalent number of 8½" x 11" pages. The metric standard format most closely approximating the described standard 8½" x 11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If Best and Final Offers (BAFOs) are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

**1852.215-82 Offeror oral presentations.**

As prescribed in 1815.407-70(h), insert the following provision:

**Offeror Oral Presentations**

(November 1993)

(a) Offerors are invited to give an oral presentation to the Government on the structure and general content of their proposals. These presentations are intended to assist Government evaluation by providing a "roadmap" to understanding proposals, i.e., an overview of the proposal organization and layout, and where required information and elements are located. Although the offeror's basic approach to satisfying solicitation requirements may be explained, it is to be done so only in general terms and only to expedite the Government's formal evaluation.

(b) The Government will not engage in any discussions during the oral presentation, and no proposal revisions will be accepted as part of the presentation. The Government's evaluation of offeror proposals will be based on the contents of the initial proposal, and any information not included in the initial proposal that is provided at the oral presentation will not be evaluated.

(c) Offerors should indicate in their proposals if they wish to give an oral presentation. These presentations are not mandatory, and electing not to give a presentation will not, in itself, affect proposal evaluation.

(d) Because the presentations are intended to assist the Government's evaluation, they will be scheduled to take place prior to commencement of the formal initial evaluation, normally within three days after proposal receipt. Offerors unable to accommodate this schedule forfeit their opportunity to provide a presentation.

(e) The presentations will consist of an offeror briefing not to exceed [insert 1 or 2] hours to be followed by a question and answer period. The order of offeror presentations will be determined at random. The exact time and place of the presentation, along with any other guidance, will be provided to the offeror by the contracting officer or his/her representative.

(f) Presentation materials are not required, but if used, the Government will retain one copy in its official file as a historical record of the presentation even though these materials will not be used in the Government's evaluation process.

(End of provision)

**1852.215-84 [Revised]**

10.-11. Section 1852.215-84 is revised to read as follows:

**1852.215-84 Ombudsman.**

As prescribed in 1815.7003, insert the following clause:

Ombudsman

(October 1996)

An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution. If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, [Insert name], at \_\_\_\_\_ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Deputy Administrator for Procurement, at 202-358-2090. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(End of clause)

**1852.216-73, 1852.216-74, 1852.216-75, 1852.216-76, 1852.216-77, 1852.216-78 [Revised]**

12.-13. Sections 1852.216-73, 1852.216-74, 1852.216-75, 1852.216-76, 1852.216-77 and 1852.216-78 are revised to read as follows:

**1852.216-73 Estimated Cost and Cost Sharing.**

As prescribed in 1816.307-70(a), insert the following clause:

Estimated Cost and Cost Sharing

(December 1991)

(a) It is estimated that the total cost of performing the work under this contract will be \$ \_\_\_\_\_.

(b) For performance of the work under this contract, the Contractor shall be reimbursed

for not more than \_\_\_\_\_ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining \_\_\_\_\_ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the \_\_\_\_\_ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ \_\_\_\_\_ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

**1852.216-74 Estimated Cost and Fixed Fee.**

As prescribed in 1816.307-70(b), insert the following clause:

Estimated Cost and Fixed Fee

(December 1991)

The estimated cost of this contract is \_\_\_\_\_ exclusive of the fixed fee of \_\_\_\_\_. The total estimated cost and fixed fee is \_\_\_\_\_.

(End of clause)

**1852.216-75 Payment of Fixed Fee.**

As prescribed in 1816.307-70(c), insert the following clause:

Payment of Fixed Fee

(December 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

**1852.216-76 Award Fee for Service Contracts.**

As prescribed in 1816.405-70(a), insert the following clause:

Award Fee for Service Contracts

(October 1996)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6\* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6\* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the

Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amount based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Office considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

\*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404-272(a).]

Alternate I

(October 1996)

As prescribed in 1816.405-70(a), insert the following paragraph (f) and reletter existing paragraph (f) to (g):

(f)(1) Pending a determination of the amount of award fee earned for an evaluation period, a portion of the available award fee for that period will be paid to the contractor on a [Insert the frequency of provisional payments (not more often than monthly)] basis. The portion paid will be \_\_\_\_\_ [Insert percentage (not to exceed 80 percent)] percent of the current period's available amount or the equivalent of the prior period's interim fee, whichever is lower; provided, however, that when the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(2) In the event the amount of award fee earned, as determined by the FDO, is less than the sum of the provisional payments made for that period, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) Provisional award fee payments will [insert "not" if appropriate] be made prior to

the first award fee determination by the Government.

(End of clause)

**1852.216-77 Award Fee for End Item Contracts.**

As prescribed in 1816.405-70(b), insert the following clause:

Award Fee for End Item Contracts

(Insert Month of Publication)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6\* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6\* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with *[identify performance evaluation plan]* to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in *[Insert "monthly", or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.*

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocation to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will *[insert "not" if applicable]* be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a *[insert the frequency of provisional payments (not more often than monthly)]* basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to *[Insert a percent not to exceed 80 percent]* of the prior interim evaluation score (see *[insert applicable cite]*). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will

either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance). This determination is not subject to the Disputes clause.

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].*

(d) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

\* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404-272(a).]

(End of clause)

**1852.216-78 Firm Fixed Price.**

As prescribed in 1816.202-70, insert the following clause:

Firm Fixed Price

(December 1988)

The total firm fixed price of this contract is \$ *[Insert the appropriate amount]*.

(End of clause)

**1852.216-80, 1852.216-81 [Revised]**

14.-15. Sections 1852.216-80 and 1852.216-81 are revised to read as follows:

**1852.216-80 Task Ordering Procedure.**

As prescribed in 1816.506-70, insert the following clause:

Task Ordering Procedures

(October 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this

clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within \_\_\_ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within \_\_\_ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

Alternate I

(October 1996)

As prescribed in 1816.506-70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

(2) Task ceiling price.

(3) Cost and hours incurred to date for each issued task.

(4) Costs and hours estimated to complete each issued task.

(5) Significant issues/problems associated with a task.

(6) Cost summary of the status of all tasks issued under the contract.

**1852.216-81 Estimated Cost.**

As prescribed in 1816.307-70(d), insert the following clause:

Estimated cost

(December 1988)

The total estimated cost for complete performance of this contract is \$ \_\_\_\_\_. [Insert total estimated cost of the contract]. See FAR clause 52.216-11, Cost Contract—No Fee, of this contract.

(End of clause)

**1852.216-83, 1852.216-84, 1852.216-85 [Revised]**

16-17. Sections 1852.216-83, 1852.216-84 and 1852.216-85 are revised to read as follows:

**1852.216-83 Fixed Price Incentive.**

As prescribed in 1816.405-70(c), insert the following clause:

Fixed Price Incentive

(October 1996)

The target cost of this contract is \$ \_\_\_\_\_. The Target profit of this contract is \$ \_\_\_\_\_. The target price (target cost plus target profit) of this contract is \$ \_\_\_\_\_. [The ceiling price is \$ \_\_\_\_\_.]

The cost sharing for target cost underruns is: Government \_\_\_\_\_percent; Contractor \_\_\_\_\_percent.

The cost sharing for target cost overruns is: Government \_\_\_\_\_percent; Contractor \_\_\_\_\_percent.

(End of clause)

**1852.216-84 Estimated Cost and Incentive Fee.**

As prescribed in 1816.405-70(d), insert the following clause:

Estimated Cost and Incentive Fee

(October 1996)

The target cost of this contract is \$ \_\_\_\_\_. The target fee of this contract is \$ \_\_\_\_\_. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are \$ \_\_\_\_\_.  
The maximum fee is \$ \_\_\_\_\_.  
The minimum fee is \$ \_\_\_\_\_.  
The cost sharing for cost underruns is:

Government \_\_\_\_\_percent; Contractor \_\_\_\_\_percent.

The cost sharing for cost overruns is: Government \_\_\_\_\_percent; Contractor \_\_\_\_\_percent.

(End of clause)

**1852.216-85 Estimated Cost and Award Fee.**

As prescribed in 1816.405-70(e), insert the following clause:

Estimated Cost and Award Fee

(September 1993)

The estimated cost of this contract is \$ \_\_\_\_\_. The maximum available award fee, excluding base fee, if any, is \$ \_\_\_\_\_. The base fee is \$ \_\_\_\_\_. Total estimated cost, base fee, and maximum award fee are \$ \_\_\_\_\_.  
(End of clause)

Alternate I

(September 1993)

As prescribed in 1816.405-70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is \$ \_\_\_\_\_. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [*total potential award fee amount, including any base fee*].

(End of clause)

**1852.216-87, 1852.216-88, 1852.216-89 [Revised]**

18-19. Sections 1852.216-87, 1852.216-88 and 1852.216-89 are revised to read as follows:

**1852.216-87 Submission of Vouchers for Payment.**

As prescribed in 1816.307-70(e), insert the following clause:

Submission of Vouchers for Payment

(December 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract [Insert the contract *number*] and be forwarded to:

[*Insert the mailing address for submission of cost vouchers.*]

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to:

[*Insert the mailing address for submission of fee vouchers.*]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the

amount withheld will be required before payment for that amount may be made.

**1852.216-88 Performance Incentive.**

As prescribed in 1816.405-70(f), insert the following clause:

Performance Incentive

(January 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) \_\_\_\_ is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of \$ (3) \_\_\_\_ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of \$ (5) \_\_\_\_\_. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within

[insert number of months or years] after the date of hardware acceptance by the Government, the Contractor will be paid [insert percentage] of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402-270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402-270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

#### 1852.216-89 Assignment and release forms.

As prescribed at 1816.307-70(f), insert the following clause:

Assignment and Release Forms

(October 1996)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR Clause 52.216-7, Allowable Cost and Payment, and FAR Clause 52.216-13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release  
NASA Form 779, Assignee's Release  
NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts

Computer generated forms are acceptable, provided that they comply with FAR Clause 52.253-1.

(End of clause)

[FR Doc. 97-1240 Filed 1-22-97; 8:45 am]

BILLING CODE 7510-01-M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 1)]

#### Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—1997 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

**SUMMARY:** The Board adopts its 1997 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1997 Government salary increases and

increases in Federal Register publication costs.

**EFFECTIVE DATE:** These rule are effective on February 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. King, (202) 927-5249, or David T. Groves, (202) 927-6395. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** The Board's regulations at 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

The Board's regulations at 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Because Board employees will receive a salary increase of 3.33% in January 1997, we are updating our user fees to recover our increased personnel cost. This update also reflects the increased Federal Register publication costs, which became effective on January 1, 1997. All fees will be updated based on our cost formula at 49 CFR 1002.3(d).

In *Central Power & Light Company v. Southern Pacific Transportation Company*, No. 41242 (STB served Dec. 31, 1996), the Board indicated that in certain cases "bottleneck" rate relief would be available in connection with the filing of a competitive access complaint. The Board is adding a new Fee Item 56(iv), Competitive access complaints, to cover that activity.

In *Class Exem. For The Construction of Connecting Track*, 1 S.T.B. 75 (1996), the Board adopted new regulations at 49 CFR 1150.36 that provide for a class exemption for the construction and operation of connecting railroad track. We are adding new Fee Item 12(ii), Notice of exemption under 49 CFR 1150.36, to cover that activity. Also, to conform with other fee items, we are providing a separate Fee Item 12(iii), Petition for exemption under 49 U.S.C. 10502 involving construction of rail lines.

Because the Board only recently revised the fees for formal complaints in Fee Items 56 (i)-(iii) in the *Regulations Governing Fees For Services Performed in Connection with Licensing and Related Services—1996 Update*, 61 FR 66229 (December 17, 1996), the fees for those items will remain at current levels.

The fee increases involved here result only from the mechanical application of the update formula at 49 CFR 1002.3(d), that was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update*, 4 I.C.C.2d 137 (1987). Therefore, we believe that good cause exists for finding that notice and comment is unnecessary for this proceeding. See *Regulations Governing Fees for Services—1990 Update*, 7 I.C.C.2d 3 (1990), *Regulations Governing Fees for Services—1991 Update*, 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees for Services—1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes, which are being adopted here, will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

#### List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: January 13, 1997.

By the Board, Chairman Morgan and Vice-Chairman Owen.

Vernon A. Williams,  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

#### PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (a), (b), (c), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

#### § 1002.1 Fees for records search, review, copying, certification, and related services.

\* \* \* \* \*

(a) Certificate of the Secretary, \$10.00.  
(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or