

(A) It involves a controlled substance or narcotic;

(B) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(C) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(D) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(E) The purchaser is a beneficiary seeking medical care; or

(F) The cardholder determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

PART 214—SEALED BIDDING

7. Section 214.201-1 is added to read as follows:

214.201-1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 215—CONTRACTING BY NEGOTIATION

8. Section 215.204-1 is added to read as follows:

215.204-1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 232—CONTRACT FINANCING

9. Subpart 232.11 is added to read as follows:

Subpart 232.11—Electronic Funds Transfer

Sec.

232.1108 Payment by Governmentwide commercial purchase card.

232.1110 Solicitation provisions and contract clauses.

232.1108 Payment by Governmentwide commercial purchase card.

The Governmentwide commercial purchase card is the mandatory EFT payment method for purchases valued at or below the micro-purchase threshold, except as provided in 213.270.

232.1110 Solicitation provisions and contract clauses.

Use the clause at 252.232-7XXX, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements when—

(1) Placement of orders or calls valued at or below the micro-purchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micro-purchase threshold under the contract or agreement.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.232-7XXX is added to read as follows:

252.232-7XXX Mandatory Payment by Governmentwide Commercial Purchase Card.

As prescribed in 232.1110, use the following clause:

MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (XXX 1999)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below \$2,500 under this contract or agreement.

(End of clause)

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BILLING CODE 5000-04-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Risk Management

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the NASA FAR Supplement (NFS) to emphasize considerations of risk management, including safety, security (including information technology security), health, export control, and damage to the environment, within the acquisition process. The proposed rule addresses risk

management within the context of acquisition planning, selecting sources, choosing contract type, structuring award fee incentives, administering contracts, and conducting contractor surveillance. Additionally, this proposed rule would require offeror proposals to include a risk management plan whenever the value of the resulting contract is expected to exceed \$5,000,000, or whenever the contracting officer determines that it would be appropriate. Furthermore, this proposed rule would allow that contractors not be paid award fee for any evaluation period in which there is a major breach of safety or security.

DATES: Comments should be submitted on or before September 20, 1999.

ADDRESSES: Interested parties should submit written comments to Kenneth A. Sateriale, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to kenneth.sateriale@hq.nasa.gov

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358-0491.

SUPPLEMENTARY INFORMATION:

A. Background

The NASA Administrator, in a January 11, 1999 message, called upon NASA to become an agency of informed risk takers. Furthermore, he emphasized that it is critically important for NASA to achieve mission success without compromising safety. On February 26, 1999, the Administrator emphasized the need for NASA contractors, both on-site and others, to be supportive of, and accountable for safety. Safety, in this context, is freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property (including intellectual property), or damage to the environment. However, given the fact that many of NASA's activities involve advanced research, aeronautics, and space flight, NASA cannot completely avoid risk. Therefore, risk must be managed, i.e., comprehensively identified, analyzed, planned, tracked, and controlled. While risk management is not a new acquisition concept, NASA has initiated a risk-based acquisition management initiative to re-focus on risk as a core acquisition concern. That initiative will be implemented through training as well as through revisions to several of NASA's internal processes and guidelines. This proposed rule only implements that part of the initiative pertaining directly to the procurement process. Since NASA's activities often include contractor efforts, NASA's focus

on safety and mission success must be conveyed in NASA contracts. (Risk issues will also be addressed in a separate NFS revision to the NASA structured approach for developing a fee/profit negotiation objective.)

Sections 1816.405–274(c) and 1852.223–76(a)(1) in this proposed rule reference definitions in NASA Procedures and Guidelines (NPG) 8621.1, NASA Procedures and Guidelines for Mishap Reporting, Investigating, and Recordkeeping. NPG 8621.1 is currently in draft and will soon be published. Until such time, it will not be easy for the public to obtain access to the definitions. Therefore, draft definitions are provided below:

Mishap—Any unplanned occurrence or event resulting from any NASA operation or equipment anomaly, involving injury to or death of any persons (including the general public, astronauts and pilots, and NASA employees and contractors), damage to or loss of property or equipment, or mission failure.

Type A Mishap—A mishap causing death and/or damage to equipment or property equal to or greater than \$1 million. Mishaps resulting in damage to aircraft, space hardware, or ground support equipment that meet these criteria are included, as are test failures in which the damage was unexpected or unanticipated.

Type B Mishap—A mishap resulting in permanent disability to one or more persons, hospitalization (within a 30-day period from the same mishap) of three or more persons, and/or damage to equipment, or property equal to or greater than \$250,000, but less than \$1 million. Mishaps resulting in damage to aircraft, space hardware, or ground support equipment that meet these criteria are included, as are test failures in which the damage was unexpected or unanticipated.

Mission Failure—A mishap of whatever intrinsic severity that, in the judgment of the Enterprise Associate Administrator/Institutional Program Officer, in coordination with the Associate Administrator for Safety and Mission Assurance, prevents the achievement of primary NASA mission objectives as described in the Mission Operations Report or equivalent document.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because few small businesses are awarded contracts valued in excess of

the \$5,000,000 threshold established in the proposed rule for submission of a risk management plan and inclusion of the safety clause.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 41 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 continues to read as follows:

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

PART 1807—ACQUISITION PLANNING

2. Section 1807.104 is added to read as follows:

1807.104 General procedures. (NASA supplements paragraph (a))

(a) Safety is NASA's highest core value. The acquisition planning team shall include representatives from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, and security concerns. (See NPG 8705.X, Risk Management Procedures and Guidelines.)

3. In section 1807.105, paragraph (a)(7) is added to read as follows:

1807.105 Contents of written acquisition plans.

(a) * * *

(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project

Management Processes and Requirements, and NPG 8705.X, Risk Management Procedures and Guidelines). These risks include such considerations as: the security of personnel, information technology, and property; the NASA Export Control Program and risks of unauthorized technology transfer; damage to the environment; program test conduct and schedules; performance incentives and contract management concerns; and the necessary level of NASA personnel resources required to manage the project/program, including whether current staffing limitations require a special plan for surveillance. This discussion should also identify those areas that have safety risk, and how safety will be addressed in contract requirements and evaluated in the source selection, and how safety will be managed and incentivized, where appropriate. Appropriate planning, i.e., decisions to research, accept, watch, or mitigate, shall be identified for each risk.

* * * * *

PART 1811—DESCRIBING AGENCY NEEDS

4. Section 1811.101(b) is added to read as follows:

1811.101 Order of precedence for requirements documents. (NASA supplements paragraph (b))

(b) When establishing product descriptions in either a solicitation or contract, contracting officers shall include safeguards, as applicable, to ensure safety and security, and preclude environmental damage.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

5. Section 1812.301, paragraph (f)(i) is revised to read as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.214–71, Grouping for Aggregate Award.

(B) 1852.214–72, Full Quantities.

(C) 1852.215–84, Ombudsman.

(D) 1852.219–75, Small Business Subcontracting Reporting.

(E) 1852.219–76, NASA Small Disadvantaged Business Goal.

(F) 1852.223–71, Frequency Authorization.

(G) 1852.223–75, Risk Management Plan.

(H) 1852.228-72, Cross-Waiver of Liability for Space Shuttle Services.

(I) 1852.228-76, Cross-Waiver of Liability for Space Station Activities.

(J) 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.

(K) 1852.232-70, NASA Progress Payment Rates.

(L) 1852.246-72, Material Inspection and Receiving Report.

PART 1815—CONTRACTING BY NEGOTIATION

6. In section 1815.201, paragraph (c)(6)(A) is revised to read as follows:

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) Except for acquisitions described in 1815.300-70(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, and whether the requirements of any Government-unique standards may be satisfied by voluntary consensus standards or industry standards. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

* * * * *

7. In section 1815.304-70, paragraphs (b)(5) and (d)(4) are added to read as follows:

1815.304-70 NASA evaluation factors.

* * * * *

(b) * * *

(5) If the solicitation requires either the submission of a Safety and Health Plan (see 1823.7001(c)), or a Risk Management Plan (see 1823.7001(d)), then the Mission Suitability factor shall include a subfactor for safety, occupational health, and mission success. Otherwise use of that subfactor is optional. (For discussion of risk management, see NPG 7120.5, NASA Program and Project Management Processes and Requirements, and NPG

8705.X, Risk Management Procedures and Guidelines.)

* * * * *

(d) * * *

(4) The contracting officer shall evaluate the offeror's past performance in occupational health, security, environmental protection, and safety and mission success (e.g., mishap rates and problems in delivered hardware and software that resulted in mishaps or failures) when these areas are germane to the requirement.

8. In section 1815.305, paragraph (a)(vi) is revised to read as follows:

1815.305 Proposal evaluation.

(a) * * *

(vi) Any programmatic risk, e.g., technical, schedule, cost, safety, occupational health, security, export control, environmental. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, or as a result of the cost, schedule, and performance impacts associated with its approach. 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, deficiencies, and numerical/adjectival ratings. Identified risks and the potential for cost impact shall be considered in the cost or price evaluation. The offeror's Risk Management Plan, if required, shall be used to support this evaluation.

* * * * *

9. In section 1815.406-170, paragraphs (c)(5) and (c)(6) are revised and paragraph (c)(7) is added to read as follows:

1815.406-170 Content of the prenegotiation position memorandum.

* * * * *

(c) * * *

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

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

(7) Any risk management issues, e.g., safety, occupational health, security.

* * * * *

PART 1816—TYPES OF CONTRACTS

10. In section 1816.405-274, paragraphs (c), (d), (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), (g), (h), and (i), respectively; and

new paragraph (c) is added to read as follows:

1816.405-274 Award fee evaluation factors.

* * * * *

(c) The technical factor, if used, must include consideration of risk management (including safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security is considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security. A major breach of safety consists of either any Type A or Type B mishap, or Mission Failure, as defined in NPG 8621.1, NASA Procedures and Guidelines for Mishap Reporting, Investigating, and Recordkeeping, or any violation cited by the Occupational Safety and Health Administration that results in either a final order of the Review Commission assessing a civil penalty, or a criminal conviction. Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security results in damage or loss greater than \$250,000 to the Government. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; or theft.

(1) For evaluation of service contracts under 1816.405-273(a), an overall fee determination of zero for any evaluation period in which there is a major breach of safety or security; or

(2) For evaluation of end item contracts under 1816.405-273(b), an overall fee determination of zero for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if a zero fee determination was made because of a major breach of safety or security.

* * * * *

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

11. 1823.7001 is revised to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts for—

(1) Negotiated acquisitions of \$1,000,000 or more;

(2) Construction, repair, or alteration in excess of the simplified acquisition threshold;

(3) Acquisitions having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Acquisitions regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature; or

(ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded—

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; or

(2) When the contracting officer, with the concurrence of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(d) The contracting officer shall insert the provision at 1852.223-75, Risk Management Plan, in all solicitations for negotiated acquisitions of \$5,000,000 or

more, unless waived at a level above the contracting officer with the concurrence of the project/program office and the center safety and occupational health official(s). For other solicitations, use of the provision is optional. After receiving the concurrence of the project/program office and the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(e) The contracting officer shall insert the clause at 1852.223-76, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety and occupational health. For other contracts, use of the clause is optional.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

12. In section 1842.503, paragraph (1)(iv) is revised to read as follows:

1842.503 Postaward conferences.

(1) * * *

(iv) Complex contract management issues are expected, e.g., safety, security, occupational health, environmental protection, export control, and/or risk management.

* * * * *

PART 1846—QUALITY ASSURANCE

13. Section 1846.000 is added to read as follows:

1846.000 Scope of part.

The Government has a duty to assure that appropriated funds are spent wisely. That duty is fulfilled in part through surveillance. Surveillance may be conducted through "insight" (i.e., monitoring of selected metrics and/or milestones) or "oversight" (i.e., Government review and concurrence with contractor decisions). The decision to use insight or oversight is based on an assessment of the risk inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as performance-based.

14. Section 1846.401 is added to read as follows:

1846.401 General. (NASA supplements paragraph (a)).

(a) The quality assurance surveillance plan (QASP) which the project office prepares in conjunction with the statement of work is preliminary. It

reflects the Government's surveillance approach relative to the perceived programmatic risk, and is written at a general rather than specific level because the risks will not be completely identified at that time. After contract award, contracting officers shall ensure that the QASP is revised to reflect the risks associated with the successful proposal. This final QASP shall not be included in the contract, but should be periodically reviewed to ensure its currency.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Section 1852.223-70 is revised to read as follows:

1852.223-70 Safety and Health.

As prescribed in 1823.7004(c), insert the following clause:

Safety and Health

(Date)

(a) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(b) The Contractor shall take, or cause to be taken, any other safety and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of \$25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee.

(d) Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as

the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(e)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (e)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(f) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that—

(1) Amount to \$1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required);

(2) Require construction, repair, or alteration in excess of \$25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(g) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(h) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification Standards for personnel involved in hazardous operations.

(End of clause)

16. In section 1852.223-73, Alternate I is removed and the basic clause is revised to read as follows:

1852.223-73 Safety and health plan.

* * * * *

Safety and Health Plan

(Date)

NASA requires that the contractor furnish supplies and services in a safe and healthful manner and develops, produces, and/or delivers products to NASA that will be safe and successful for their intended use. The offeror shall submit a detailed safety and occupational health plan, as part of its proposal. The plan must include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of contractor employees and to ensure the safety of all working conditions throughout the performance of the contract. The plan must similarly address safety and occupational health for subcontractor employees for any proposed subcontract whose value is expected to exceed \$500,000, including commercial services and services provided in support of a commercial item. Also, when applicable, the plan must address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of NASA employees and the public. This plan, as approved by the Contracting Officer, will be included in any resulting contract. (For additional detail on content for the Safety and Health Plan, see NPG 8715.1, NASA Safety Manual Procedures and Guidelines, Appendix H.)

(End of provision)

17. Section 1852.223-75 is added to read as follows:

1852.223-75 Risk Management Plan.

As prescribed in 1823.7001(d), insert the following provision:

Risk Management Plan

(Date)

The offeror shall submit a detailed Risk Management Plan, as part of the offeror's proposal. The plan must include a detailed description of the offeror's plan to use risk management techniques to manage programmatic risks (e.g., safety, technical, cost, schedule, security, export control, and damage to the environment) throughout the performance of the contract. The plan must conform to NASA's guidance on risk as described in NASA Procedures and Guidelines 8705.X, Risk Management Procedures and Guidelines. The plan must similarly address risk management for subcontracted effort whose value is expected to exceed \$500,000. Costs solely attributable to risk management must be clearly identifiable in the offeror's proposal. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

18. Section 1852.223-76 is added to read as follows:

1852.223-76 Safety.

As prescribed in 1823.7001(e), insert the following clause:

Major Breach of Safety or Security

(Date)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of safety is an act or omission of the contractor that results in either—

(1) Any Type A or Type B mishap, or Mission Failure as defined in NPG 8621.1, NASA Procedures and Guidelines for Mishap Reporting, Investigating, and Recordkeeping; or

(2) Any violation cited by the Occupational Safety and Health Administration that results in a final order of the Review Commission assessing a civil penalty, or a criminal conviction.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security results in damage or loss greater than \$250,000 to the Government. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall, if directed by the Contracting Officer, conduct its own investigation and report the results to the Government, and the Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

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