

§ 51.323 Standards for physical collocation and virtual collocation.

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(b) Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety. Equipment used for interconnection or access to unbundled network elements includes, but is not limited to:

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(f) * * *

(4) An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that neither the incumbent LEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

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(k) * * *

(3) *Adjacent space collocation.* An incumbent LEC must make available, where physical collocation space is legitimately exhausted in a particular incumbent LEC structure, collocation in adjacent controlled environmental vaults, controlled environmental huts, or similar structures located at the incumbent LEC premises to the extent technically feasible. The incumbent LEC must permit a requesting telecommunications carrier to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and telecommunications equipment, in adjacent facilities constructed by the incumbent LEC, the requesting carrier, or a third-party. If physical collocation space becomes available in a previously exhausted incumbent LEC structure, the incumbent LEC must not require a carrier to move, or prohibit a competitive LEC from moving, a collocation arrangement into that structure. Instead, the incumbent LEC must continue to allow the carrier to collocate in any adjacent controlled environmental vault, controlled environmental vault, or similar structure that the carrier has constructed or otherwise procured.

(1) An incumbent LEC must offer to provide and provide all forms of physical collocation (*i.e.*, caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

(1) Within ten days after receiving an application for physical collocation, an incumbent LEC must inform the requesting carrier whether the application meets each of the incumbent LEC's established collocation standards. A requesting carrier that resubmits a revised application curing any deficiencies in an application for physical collocation within ten days after being informed of them retains its position within any collocation queue that the incumbent LEC maintains pursuant to paragraph (f)(1) of this section.

(2) Except as stated in paragraphs (1)(3) and (1)(4) of this section, an

incumbent LEC must complete provisioning of a requested physical collocation arrangement within 90 days after receiving an application that meets the incumbent LEC's established collocation application standards.

(3) An incumbent LEC need not meet the deadline set forth in paragraph (1)(2) of this section if, after receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed.

(4) If, within seven days of the requesting carrier's receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed, then the incumbent LEC need not complete provisioning of a requested physical collocation arrangement until 90 days after receiving such notification from the requesting telecommunications carrier.

[FR Doc. 00-22889 Filed 9-7-00; 8:45 am]

BILLING CODE 6712-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1828 and 1852****Insurance—Partial or Total Immunity From Tort Liability for State Agencies and Charitable Institutions**

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to allow State agencies and charitable institutions partial or total immunity from tort liability on NASA contracts.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Kall, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358-0459.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed rule was published in the **Federal Register** on April 25, 2000 (65 FR 24170-24171). No comments were received. This final rule adopts the proposed rule without change.

B. Regulatory Flexibility Act

NASA certifies that this rule 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 it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1828 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

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

PART 1828—BONDS AND INSURANCE

2. Revise sections 1828.311-1 and 1828.311-2, and add section 1828.311-270 to read as follows:

1828.311-1 Contract clause.

The contracting officer must insert the clause at FAR 52.228-7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311-1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

1828.311-2 Agency solicitation provisions and contract clauses.

1828.311-270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228-80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at 1852.228-81, Insurance—

Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228-82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend Part 1852 by adding sections 1852.228-80, 1852.228-81, and 1852.228-82 to read as follows:

1852.228-80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311-270(b), insert the following provision:

Insurance—Immunity From Tort Liability, September, 2000

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance—Liability To Third Persons, and the associated NFS clause 1852.228-81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82 Insurance—Total Immunity From Tort Liability, will be included in the contract. (End of provision)

1852.228-81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311-270(c), insert the following clause:

Insurance—Partial Immunity From Tort Liability, September 2000

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228-7, Insurance—Liability To Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary,

subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228-7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount. (End of clause)

1852.228-82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311-270(d), insert the following clause:

Insurance—Total Immunity From Tort Liability, September 2000

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation. (End of clause)

[FR Doc. 00-23006 Filed 9-7-00; 8:45 am]

BILLING CODE 7510-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[RSPA-97-2094; Amdt. Nos. 192-89; 195-69]

RIN 2137-AC54

Pipeline Safety: Underwater Abandoned Pipeline Facilities

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This rule will require the last operator of an abandoned natural gas or hazardous liquid pipeline facility that is located offshore or crosses under, over or through a commercially navigable waterway to submit a report of the abandonment to the Secretary of Transportation. The results of this final