

contour. It is specified in Part 74 of the Commission rules to protect analog TV signals from co-channel interference from low power TV, TV translator or TV booster stations. This ratio provides greater protection than the 34 dB ratio specified in Part 73 to protect analog TV signals from interference from digital TV signals. We find that the D/U ratios recommended by National Association of Broadcasters are overly protective and thus affirm our decision to base the separation rules on a 45 dB D/U ratio.

5. While we find that the rules we adopted are adequate to prevent interference, we also note that recent Commission actions will serve to reduce the number of medical telemetry users in the TV bands. Subsequent to this proceeding, the Commission allocated three new frequency bands where medical telemetry can operate on a primary basis. In allocating these bands, our goal was not only to provide spectrum where medical telemetry can operate without interference, but also to encourage medical telemetry users to migrate out of the current bands. To accomplish this transition, the Commission will cease approving medical telemetry equipment that can operate in the TV bands starting October 16, 2002. While there is no cutoff on the marketing and use of medical telemetry equipment approved prior to that date, we expect that the use of medical telemetry equipment in the TV bands will gradually cease as equipment that operates in the newly allocated bands is deployed to replace older equipment.

6. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r), the Petition for Reconsideration filed by the Cellular Phone Taskforce *is dismissed*.

7. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r), the Petition for Partial Reconsideration filed by the National Association of Broadcasters *is denied*.

#### List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Report and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-14173 Filed 6-5-02; 8:45 am]

BILLING CODE 6712-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1813 and 1852

RIN 2700-AC33

#### Non-Commercial Representations and Certifications and Evaluation Provisions for Use in Simplified Acquisitions

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NFS to provide a consolidated set of representations and certifications and an evaluation provision for the acquisition of non-commercial items within the simplified acquisition threshold.

**EFFECTIVE DATE:** June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358-1645 or e-mail: cdalton@hq.nasa.gov.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Currently for commercial acquisitions, FAR provision 52.212-3, Offeror Representations and Certifications—Commercial Items, provides a consolidated set of representations and certifications. No equivalent provision exists for non-commercial items. This final rule provides an equivalent provision for use with NASA's non-commercial acquisitions within the simplified acquisition threshold (SAT). This new consolidated provision will ensure that all appropriate representations and certifications are consistently used and will simplify the incorporation of representation and certification into solicitations. Additionally, this final rule provides an evaluation provision to be used in non-commercial acquisitions within the SAT when selection is based on other than technically acceptable low offer. This evaluation provision will provide a consistent notice to offerors of how evaluations will be conducted.

NASA published a proposed rule in the *Federal Register* on January 25, 2002 (67 FR 3669-3673). Two respondents submitted comments on the proposed rule. One respondent was generally supportive of the proposed rule. The other respondent's comments indicated a lack of understanding that this change is merely a consolidation of existing requirements and not an imposition of additional requirements. The comments received were

considered in formulation of this final rule. While no changes are being made as a result of comments received, changes are being made for consistency with existing FAR provisions. Changes made include removal of the Trade Agreements Certificate since it does not apply to acquisitions within the SAT; removal of the definition of "woman-owned business" since 52.219-1 no longer has this category; replacing "place of ownership" with "office" under the HUBZone certification as a result of changes made to 52.219-1 in FAC 01-06; and editorial changes at 1813.302-570(a)(2) for consistency of formatting and at 1852.213-70(c)(6)(i) and 1852.217-70(c)(6)(ii) for clarity.

##### B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 USC 601, *et seq.*), because this rule merely consolidates within one provision existing FAR representations and certifications for use in non-commercial simplified acquisitions.

##### C. Paperwork Reduction Act

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

#### List of Subjects in 48 CFR Parts 1813 and 1852

Government Procurement.

**Scott Thompson,**

*Acting Assistant Administrator for Procurement.*

Accordingly, 48 CFR Part 1813 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1813 and 1852 continues to read as follows:

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

#### PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

2. Add section 1813.302-570 to read as follows:

##### 1813.302-570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213-70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the

micro-purchase threshold that are for other than commercial items. This provision shall not be used for acquisitions conducted under FAR 13.5.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer.

(i) Use the provision with its Alternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4).

(ii) Use the provision with its Alternate II in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3).

(iii) Use the provision with its Alternate III in solicitation which include the clause at FAR 52.227-14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213-71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when evaluation factors are to be included for evaluation and the selection will be based upon best value, rather than technically acceptable, low price. (See FAR 13.106.)

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add sections 1852.213-70 and 1852.213-71 to read as follows:

### 1852.213-70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302-570, insert the following provision:

#### Offeror Representations and Certifications—Other Than Commercial Items—(JUN 2002)

(a) Definitions. As used in this provision—  
“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a

disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Service-disabled veteran-owned small business concern”—Means a small business concern—

(1) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN: \_\_\_\_\_.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business

or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049-4;

[ ] Other \_\_\_\_\_.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness

Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of employees	Average annual gross revenues
50 or fewer	\$1 million or less.
51–100	\$1,000,001–\$2 million.
101–250	\$2,000,001–\$3.5 million.
251–500	\$3,500,001–\$5 million.
501–750	\$5,000,001–\$10 million.
751–1000	\$10,000,001–\$17 million.
Over 1000	Over \$17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) [Complete if dollar value of the resultant contract is expected to exceed \$25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.] [The offeror shall check the category in which its ownership falls]:

- Black American.
- Hispanic American.
- Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the

Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

— Subcontinent Asian (Asian-Indian American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

— Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Buy American Act—Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—Balance of Payments Program—Supplies” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

*Line Item No. and Country of Origin*

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[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(f)(1) Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of

Payments Program” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program”: NAFTA Country or Israeli End Products:

*Line Item No. and Country of Origin*

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[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

*Line Item No. and Country of Origin*

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[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I. If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program”:

Canadian End Products:

*Line Item No.*

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[List as necessary]

(3) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II. If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade

Agreement—Israeli Trade Act—Balance of Payments Program”:

Canadian or Israeli End Products:

*Line Item No. and Country of Origin*

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[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

*Line Item No. and Country of Origin*

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[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (j)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at FAR 22.1503(b).]

(1) Listed end products.

*Listed End Product and Listed Countries of Origin*

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(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

#### Alternate I—Jun 2002

As prescribed in 1813.302-570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

#### Alternate II—Jun 2002

As prescribed in 1813.302-570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College or University and Minority Institution Representation

(1) Definitions. As used in this provision—  
“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) Representation. The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

#### Alternate III—Jun 2002

As prescribed in 1813.302-570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation of Limited Rights Data and Restricted Computer Software

(1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at FAR 52.227-16, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at FAR 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor

may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at FAR 52.227-14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

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**Note:** “Limited rights data” and “Restricted computer software” are defined in the contract clause entitled “Rights in Data-General.”

#### 1852.213-71 Evaluation—Other Than Commercial Items.

As prescribed in 1813.302-570(b) insert the following provision:

#### Evaluation—Other Than Commercial Items—Jun 2002

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

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[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the

option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[FR Doc. 02-14162 Filed 6-5-02; 8:45 am]

BILLING CODE 7510-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1847 and 1852

RIN 2700-AC33

#### Shipment by Government Bills of Lading

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** This is an interim rule amending the NASA FAR Supplement (NFS) to specify that shipment by Government Bills of Lading (GBLs) may only be used to ship international and domestic overseas items deliverable under contracts. All other shipments shall be made via Commercial Bills of Lading (CBLs).

**DATES:** *Effective Date:* This interim rule is effective June 6, 2002.

*Applicability Date:* This amendment applies to all contracts awarded on or after the effective date.

*Comment Date:* Comments should be submitted to NASA at the address below on or before August 5, 2002, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to Lou Becker, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to [lbecker@hq.nasa.gov](mailto:lbecker@hq.nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Lou Becker, (202) 358-4593, or [lbecker@hq.nasa.gov](mailto:lbecker@hq.nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Effective March 31, 2002, the General Services Administration (GSA) is retiring the use of Optional Form 1103, U.S. Government Bill of Lading (GBL) and Optional Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (PPGBL) for domestic shipments. This interim rule amends the NFS to comply with Federal Management Regulation (FMR) Part 102-117 (41 CFR 102-117), Transportation Management, published in the Federal Register on October 6, 2000 (65 FR 60060), and FMR Part 102-

118 (41 CFR 102-118), Transportation Payment and Audit, published in the **Federal Register** on April 26, 2000 (65 FR 24568). NASA clause 1852.247-73 is revised to change the title to "Bills of Lading," and indicate that GBLs may only be used to ship international and domestic overseas items deliverable under contracts, and all other domestic shipments shall be made via Commercial Bills of Lading (CBL).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the change only affects contracts where the point of delivery for domestic shipments of items deliverable under a contract is f.o.b. origin.

##### C. Paperwork Reduction Act

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

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to amend shipping instructions that are now obsolete as a result of changes to the Federal Management Regulation (FMR) Part 102-117 (41 CFR 102-117), Transportation Management, published in the **Federal Register** on October 6, 2000 (65 FR 60060), and FMR Part 102-118 (41 CFR 102-118), Transportation Payment and Audit, published in the **Federal Register** on April 26, 2000 (65 FR 24568).

### List of Subjects in 48 CFR Parts 1847 and 1852

Government Procurement.

**Scott Thompson,**

*Acting Assistant Administrator for Procurement.*

Accordingly, 48 CFR Parts 1847 and 1852 are amended as follows:

1. The authority citation of 48 CFR Parts 1847 and 1852 continues to read as follows:

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

#### PART 1847—TRANSPORTATION

2. In section 1847.305-70, revise paragraph (b) to read as follows:

**1847.305-70 NASA contract clauses.**

\* \* \* \* \*

(b) The contracting officer shall insert a clause substantially as stated at 1852.247-73, Bills of Lading, in f.o.b. origin solicitations and contracts.

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

3. Revise section 1852.247-73 to read as follows:

##### 1852.247-73 Bills of Lading.

As prescribed in 1847.305-70(b), insert a clause substantially as follows:

##### Bills of Lading (JUN 2002)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: \_\_\_\_\_  
Destination: \_\_\_\_\_".

(b) *Government Bills of Lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.