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PART 1837

SERVICE CONTRACTING

(Revised February 4, 2016)

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PART 1837

SERVICE CONTRACTING

Subpart 1837.1--Service Contracts--General

1837.101 Definitions.

"Pension portability" means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.104 Personal services contracts.

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA "to obtain services as authorized by Section 3109 of Title 5, United States Code." It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants.

1837.106-70 Funding and term of service contracts--Additional considerations.

(a) For all severable service contracts, the base period of performance shall not extend beyond the date of the availability of the funds initially obligated to the contract at the time of award. The Bona Fide Needs Rule, codified at 31 U.S.C 1502, provides that the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. The period of performance of any option on severable service contracts also shall not extend beyond the period of availability of funds. Contracts including such options shall contain the appropriate "Availability of Funds" clause.

(b) Decisions regarding the severability of the work and compliance with the Bona Fide Needs Rule should be made as early as possible in the acquisition planning process. Contracting officers, in collaboration with the requirements initiator and supporting Center Financial and Legal personnel, should ensure, in accordance with FAR 7.105 and NFS 1807.105, that the funding and term of severable service contracts are considered and discussed in acquisition planning documentation, including the severability of the work and compliance with the Bona Fide Needs Rule. For additional information on acquisition funding to include the Bona Fide Need rule click [here](#).

1837.110 Solicitation provisions and contract clauses.

1837.110-70 NASA solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at [1852.237-70](#), Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at [1852.237-71](#), Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years

(inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or
(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and
(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237-71, Pension Portability, (see 1837.110-70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2--Advisory and Assistance Services

1837.203 Policy.

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NPR 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants).

1837.203-70 Providing contractors access to sensitive information.

(a)(1) As used in this subpart, "*sensitive information*" refers to information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects: (1) to impair the Government's ability to obtain this type of information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

(2) As used in this subpart, "*requiring organization*" refers to the NASA organizational element or activity that requires specified services to be provided.

(3) As used in this subpart, "*service provider*" refers to the service contractor that receives sensitive information from NASA to provide services to the requiring organization.

(b)(1) To support management activities and administrative functions, NASA relies on numerous service providers. These contractors may require access to sensitive information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure.

(2) As an initial step, the requiring organization shall identify when needed services may entail access to sensitive information and shall determine whether providing access is necessary for accomplishing the Agency's mission. The requiring organization shall review any service provider requests for access to information to determine whether the access is necessary and whether the information requested is considered "sensitive" as defined in paragraph (a)(1) of this section.

(c) When the requiring organization determines that providing specified services will entail access to sensitive information, the solicitation shall require each potential service provider to submit with its proposal a preliminary analysis of possible organizational conflicts of interest that might flow from the award of a contract. After selection, or whenever it becomes clear that performance will necessitate access to sensitive information, the service provider must submit a comprehensive

organizational conflicts of interest avoidance plan.

(d) This comprehensive plan shall incorporate any previous studies performed, shall thoroughly analyze all organizational conflicts of interest that might arise because the service provider has access to other companies' sensitive information, and shall establish specific methods to control, mitigate, or eliminate all problems identified. The contracting officer, with advice from Center counsel, shall review the plan for completeness and identify to the service provider substantive weaknesses and omissions for necessary correction. Once the service provider has corrected the substantive weaknesses and omissions, the contracting officer shall incorporate the revised plan into the contract, as a compliance document.

(e) If the service provider will be operating an information technology system for NASA that contains sensitive information, the operating contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources, which requires the implementation of an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use.

(f) NASA will monitor performance to assure any service provider that requires access to sensitive information follows the steps outlined in the clause at 1852.237-72, Access to Sensitive Information, to protect the information from unauthorized use or disclosure.

1837.203-71 Release of contractors' sensitive information.

Pursuant to the clause at 1852.237-73, Release of Sensitive Information, offerors and contractors agree that NASA may release their sensitive information when requested by service providers in accordance with the procedures prescribed in 1837.203-70 and subject to the safeguards and protections delineated in the clause at 1852.237-72, Access to Sensitive Information. As required by the clause at 1852.237-73, or other contract clause or solicitation provision, contractors must identify information they claim to be "sensitive" submitted as part of a proposal or in the course of performing a contract. The contracting officer shall evaluate all contractor claims of sensitivity in deciding how NASA should respond to requests from service providers for access to information.

1837.203-72 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.237-72, Access to Sensitive Information, in all solicitations and contracts for services that may require access to sensitive information belonging to other companies or generated by the Government.

(b) The contracting officer shall insert the clause at 1852.237-73, Release of Sensitive Information, in all solicitations, contracts, and basic ordering agreements.

1837.204 Guidelines for determining availability of personnel.

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in [FAR 37.204\(b\)](#).

(c) The agreement shall be made by the program official responsible for the evaluation and the

contracting officer.

(e) The Assistant Administrator for Procurement is the approval authority for class determinations. The class determination request shall include the assessment required by [FAR 37.204\(b\)](#).

SUBPART 1837.6—PERFORMANCE-BASED ACQUISITION

1837.601 General.

(a) A statement of objectives (SOO) may be used on both competitive and non-competitive acquisitions. Use of a SOO on a competitive acquisition must be approved by the Procurement Officer and supported by a description of how the source selection process will be structured to accommodate evaluation of offeror-unique performance work statements submitted in response to the SOO.

1837.604 Quality assurance surveillance plans.

A Quality Assurance Surveillance Plan (QASP) must be developed for each contract for services, and also for supplies where higher-level contract quality requirements are required. Those plans must be consistent with and may be included within the over-arching project QASP (PQASP) described in [NPR 8735.2](#), Management of Government Quality Assurance Functions for NASA Contracts.