

INVITATION FOR BID

NSBF-IFB-2004-RJF-03

FABRICATE SHIPPING CONTAINERS

SEPTEMBER 21, 2004

SECTION A- SOLICITATION, OFFER AND AWARD

Whenever a reference is made in this IFB to the Government it means the Government and New Mexico State University (NMSU), Physical Science Laboratory (PSL), National Scientific Balloon Facility (NSBF).

Whenever a reference is made to Contracting Officer it means the Buyer/ Purchasing Agent.

1. SF 33 (REV. 9-97)

Return this completed form in your sealed bid package.

SOLICITATION, OFFER AND AWARD

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

RATING

DO-C9

PAGE OF 5 PAGES

2. CONTRACT NUMBER NAS5-03003	3. SOLICITATION NUMBER NSBF-IFB-2004-RJF-03	4. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 9/21/04	6. REQUISITION/PURCHASE NUMBER
7. ISSUED BY NATIONAL SCIENTIFIC BALLOON FACILITY 1510 E FM 3224 PALESTINE TX 75803		8. ADDRESS OFFER TO (If other than Item 7) NATIONAL SCIENTIFIC BALLOON FACILITY PO BOX 319 PALESTINE TX 75802		

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and ONE copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in ADMINISTRATION CONFERENCE ROOM AT LINE 7 LOCATION until 4:00 PM local time OCTOBER 5 2004
(Hour) (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME RON FRAME, PURCHASING	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS ron.frame@nsbf.nasa.gov
		AREA CODE 903	NUMBER 731-8516	EXT.

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X	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
15B. TELEPHONE NUMBER	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
AREA CODE NUMBER EXT.			

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise)
24. ADMINISTERED BY (If other than Item 7)	25. PAYMENT WILL BE MADE BY	ITEM
26. NAME OF CONTRACTING OFFICER (Type or print)	27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

SECTION B- SUPPLIES OR SERVICES AND PRICE/ COST

1. Invitation For Bid (IFB) Form.
Return this completed form in your sealed bid package.
2. Attachment I, Specifications for New Shipping Containers
3. No Response Form.
Return this form if your company does not intend to submit a sealed bid and/ or would like to be considered for future offerings.



INVITATION FOR BID

(IFB)

PHYSICAL SCIENCE LABORATORY

NEW MEXICO STATE UNIVERSITY
PURCHASING GROUP

NATIONAL SCIENTIFIC BALLOON FACILITY

BILLING: P. O. Box 319, Palestine, Texas 75802-0319

SHIPPING: 1510 East FM 3224, Palestine, Texas 75803

PHONE: 903 • 729 • 0271

FAX: 903 • 723 • 8054

TWX: 903.860.5820

EMAIL: ron.frame@nsbf.nasa.gov

BID NO: NSBF-IFB-2004-RJF-03

DATE: SEPTEMBER 21, 2004

BUYER: Ron Frame

BUYER'S DIRECT PHONE: 903/731-8516

AN EQUAL OPPORTUNITY EMPLOYER

TO:

NO FACSIMILE OR ELECTRONIC BIDS ACCEPTED ON SEALED BIDS.

Sealed bids subject to the conditions on the reverse side hereof will be received at the office of the Purchasing Agent on this form UNTIL 4 o'clock p. m., local time, OCTOBER 5, 2004, and then publicly opened, for furnishing supplies and/or services as listed below, **FOB Physical Science Laboratory, National Scientific Balloon Facility, Palestine, Texas 75802-0319.**

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL	DELIVERY
1	5	FABRICATE 8' H X 8' W X 7'2 L CONTAINERS PER ATTACHMENT 1, SPECIFICATIONS FOR NEW SHIPPING CONTAINERS			

(BIDS MUST BE RECEIVED IN A SEALED ENVELOPE – NO FAXES ACCEPTED)

1. Questions: All questions regarding this IFB must be submitted in writing to the Buyer, Ron Frame, as soon as possible at the above address. Questions the government may have otherwise answered may not be answered if submitted too late to permit to transmittal to all potential bidders reasonably in advance of the due date. Facsimile (FAX) transmittals are acceptable, but EMAIL is encouraged for submittal of questions pertaining to this IFB. **TECHNICAL QUESTIONS MUST BE SUBMITTED NO LATER THAN 4:00 PM, 10-01-04**

NOTE: 1) FOB –PALESTINE, TX.
2) ALL ITEMS OFFERED MUST BE NEW UNLESS OTHERWISE SPECIFIED.
3) ALL PRICES WILL BE PER UNIT PRICE. ANYTHING ELSE WILL BE DISQUALIFIED.

NOTE: EXACT EQUIVALENT ACCEPTABLE UNLESS OTHERWISE SPECIFIED, IF BIDDING AN EQUIVALENT, WRITTEN LITERATURE, DESCRIPTIVE MATERIAL OR SAMPLES MUST BE ATTACHED. IF NOT ATTACHED, THE BID CAN BE DISQUALIFIED.

The Physical Science Laboratory / National Scientific Balloon Facility is authorized for General Services Administration contracts and prices. Bidder(s) should furnish contract number, contract effective date and expiration date.

WARRANTY: YES NO
(If yes, please state terms: _____) GSA CONTRACT _____ EFFECTIVE DATE: _____
EXPIRATION DATE: _____

Discounts will be allowed as follows: 10 calendar days _____% 20 calendar days _____% 30 calendar days _____% Net 30 _____%

SIGNED: _____
(Authorized Signature)

TITLE: _____
(Printed Title)

(Printed Name)

PHONE: _____ FAX: _____

INSTRUCTIONS TO BIDDERS

1. Bids are to comply with all instructions and provide the information requested in the appropriate space. Failure to do so may disqualify your bid.
2. Samples of items, when required, must be furnished free of expense prior to the opening of bids and if not destroyed, will, upon request be returned at the bidder's expense.
3. Prices should be stated in units or quantity specified, with packing included.
4. Time or proposed delivery must be stated in definite terms. If time varies for different items, the bidder should so state.
5. Time of delivery shall be stated as the number of calendar days following receipt of the order either verbally or in writing, whichever is received first by the vendor, to receipt of the goods or services by the University.
6. Time of delivery may be a consideration in the award.
7. Envelopes containing bids must be sealed and marked on the upper left-hand corner with the name and address of the bidder. On the lower left-hand corner the bid number, opening date, and subject must be identified with the enclosed label.
8. IMPORTANT – Bids not in the office of the Purchasing Agent at the time of the opening are disqualified and will be returned unopened.
9. Corrections and/or modifications received after the opening time specified will not be accepted
10. Where an item is specified by brand name, it is not the intention to discriminate against any approved equal product made by another manufacture. It is, rather, the intention to set a definite standard and style. Any 'or equal' item offered must substantially equal the appearance, design, dimensions, approximate cost of the item specified, and must be of equivalent materials, function and sturdiness of construction of the item specified. Any deviation from specifications must be clearly itemized by bidder.
11. When brand, number or level of quality is not stated by the bidder, it is understood the offer is exactly as specified.
12. The Physical Science Laboratory is exempt from paying sales tax for materials and federal excise taxes. Do not include those taxes in your bid. A non-taxable transaction certificate will be provided upon request. Services are not exempt.
13. If your bid is accepted, you will receive a Purchase Order verbally and then confirmed in writing to authorize you to make delivery.
14. Partial shipments are acceptable, unless otherwise specified herein..
15. All questions on the bid(s) should be directed to the buyer referenced.
16. Compliance with U. S. Public Law No. 95-507 shall be adhered to.

The New Mexico State University, Physical Science Laboratory in Las Cruces, New Mexico has a prime contract no. NAS5-03003 with the National Aeronautics and Space Administration, GSFC, Wallops Flight Facility, Wallops Island, Virginia. This contract is for the operation of the National Scientific Balloon Facility, Palestine, Texas.

CONDITIONS

1. The Purchasing Agent reserves the right to reject any and all bids, to waive any informality in bids unless otherwise specified by the bidder, to accept any item on the bid.
2. In case of error in the extension of prices in the bid, the unit price will govern. Extension of the unit price is mandatory in total price. If not extended and totaled, this is reason for disqualification.
3. PSL will take advantage of cash discounts offered whenever possible; however, cash discounts will be used as a means to determine the lowest responsible bidder.
4. Time in connection with discount offered will be computed from date of delivery or from date correct bill rendered on proper voucher form, certified by contractor, is received, whichever date is latest.
5. Additional calendar days for inspection, rejection or acceptance testing on high technology equipment/items will be required by PSL. Time in connection with discounts offered will be based on this criteria.
6. PSL reserves the right to award by item, group of items, or total bids (unless otherwise specified by the bidder, to accept any item on the bid) to reject any and all bids in whole or in part if, in the judgment of the Purchasing Agent the best interests of PSL, New Mexico State University will be served
7. The New Mexico Procurement Code, Section 13-1-28 through 13-1-199, NMSA, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose criminal penalties for illegal bribes, gratuities and kick-backs

ATTACHMENT 1
SPECIFICATIONS FOR NEW SHIPPING CONTAINERS
FOR
NATIONAL SCIENTIFIC BALLOON FACILITY
PALESTINE, TEXAS

The National Scientific Balloon Facility (NSBF) is a service contract funded by the National Aeronautics Space Administration (NASA) under the NASA Contract No. NAS5-03003. The New Mexico State University, Physical Science Laboratory is the prime contractor for the management and operations for the NSBF contract.

This IFB will be to award a contract to purchase of (5) New Shipping Containers per specifications listed below:

- I. LOCATION: Shipping containers to be delivered to 1510 E FM 3224-Palestine, TX 75803
- II. New shipping containers, Unicon certified, ie., visually inspected to insure the containers are numbered/ water tight and able to be locked. They are to be cut down to the following outside dimensions:
 - a. Height- 8 feet
 - b. Width- 8 feet
 - c. Length- 7 feet/ 2 inches
- III. Container interiors shall be cleaned and painted with one coat primer.
- IV. Exterior cleaned and painted one coat safety yellow.
- V. Double doors for entry. Container doors considered to be front.
 - a. All sea containers shall consist of two doors each
 - b. Each door shall consist of 2 standard lever type latching mechanisms
 - c. All 5 sea container door levers (2 for opening and closing each door) shall be located on doors 3 feet above ground level, with each pair of door levers turning toward the hinge side of its respective door when closing
- VI. Fork pockets located on side of container. Fork pockets shall be 36" apart. Fork pocket opening approximately 4.5"x11" or 4"x10".
- VII. **Target delivery date November 19, 2004.** If you cannot meet this date, please indicate best delivery date _____.

NO RESPONSE FORM
NSBF-IFB-2004-RIF-03

Please complete the information below and return to us by mail or facsimile (903) 723-8054.

(Name of Company)

does not intend to submit a bid in response to the above titled INVITATION FOR BID..

Please *keep* *do not keep our name on the source list for similar requirements.*

If you are not submitting a bid, please indicate reason/reasons below.

- Does not meet specifications*
- Due to dealer contract, cannot submit*
- Do not carry item*
- Cannot meet delivery time*
- Other. Please explain.*

Authorized Signature

Date

SECTION C

DESCRIPTION/ SOW/ SPECIFICATIONS

REFER TO SECTION B, SUPPLIES OR SERVICES AND PRICE/ COST

SECTION D

PACKAGING AND MARKING

1. REFER TO SECTION B- ATTACHMENT I, ENTITLED "SPECIFICATIONS FOR NEW SHIPPING CONTAINERS"
2. REFER TO SECTION K, REPRESENTATIONS, ... PAGE 8 OF 30, ENTITLED "K-9 52.247-53, FREIGHT CLASSIFICATION DESCRIPTION (APR 1984)"

SECTION E

INSPECTION AND ACCEPTANCE

REFER TO SECTION H- SPECIAL CONTRACT REQUIREMENTS...ITEM #3
ENTITLED "INSPECTION, REJECTION, AND ACCEPTANCE"

SECTION F

DELIVERIES OR PERFORMANCE

1. Delivery and performance is most important. State earliest possible ship date on the IFB form in Section B.
2. Refer to Section H- Special Contract Requirements,.....

PLEASE NOTE: NSBF TARGET DATE FOR DELIVERY IS NOVEMBER 19, 2004

SECTION G

CONTRACT ADMINISTRATION DATA

[THERE ARE NO CLAUSES IN THIS SECTION]

SECTION H

SPECIAL CONTRACT REQUIREMENTS

All references to the Government shall include, in addition to the United States Government, New Mexico State University / Physical Science Laboratory, and the National Scientific Balloon Facility. All references to the Contracting Officer shall include the Purchasing Agent of the National Scientific Balloon Facility or his or her designee. All references to the Contractor shall include the Offeror, Bidder or Vendor.

TO REDUCE PAPERWORK, THIS SECTION H OMITTS THE FOLLOWING PAGES WHICH DO NOT APPLY TO THIS PROCUREMENT: PAGES 4-6, 8-11

**NMSU / PSL
TERMS AND CONDITIONS OF PURCHASE ORDER
(APPLIES TO ALL ORDERS)**

1. **CHANGES.** The Buyer may make changes in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; (iii) place of delivery; and (iv) time of delivery. If any such change causes an increase or decrease in the cost of or time required for the performance of this Purchase Order, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within 30 days from the date of receipt by the Seller of a notification of such change.
2. **VARIATION IN QUANTITY.** No variation in the quantity of any item called for by this Purchase Order will be accepted unless such variation has been caused by conditions of loading, shipping or packing or allowances in manufacturing processes.
3. **INSPECTION, REJECTION AND ACCEPTANCE.**
 - (a) All supplies shall be subject to inspection and test by the Buyer, and/or Government inspectors, at all times and places prior to final acceptance by the Buyer,
 - (b) In case any supplies or loss of supplies are defective in material or workmanship, the buyer shall have the right either to reject them or to require their correction. Supplies which have been rejected shall at Seller's expense be removed, or at Buyer's option corrected in place promptly after notice. Removed supplies shall not thereafter be tendered for acceptance without the knowledge and consent of the Buyer.
 - (c) If any inspection or test is made on the premises of the Seller, the Seller shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors. The Buyer reserves the right to charge to the Seller any additional cost of inspection and test when the supplies are not ready at the time such inspection and test are requested by the Seller or when reinspection or retest is necessitated by prior rejection. Failure to inspect and accept or reject supplies shall neither relieve the Seller from responsibility for such supplies in accordance with the Purchase Order requirements, nor impose liability on the Buyer therefor.
 - (d) All returns of defective or rejected supplies shall be at the Seller's risk and expense. Supplies found to be not in accordance with specifications shall be held at Seller's risk. Inspection, failure to inspect, acceptance and/or payment shall not affect any warranty or guaranty expressed or implied herein or elsewhere or any right of the Buyer with respect thereto.
4. **RESPONSIBILITY FOR SUPPLIES.** The Seller shall be responsible for the supplies covered by this contract until they are delivered to the Buyer, regardless of the point of inspection, and the Buyer shall be responsible for the supplies while in possession of the Buyer, except that the Seller shall bear all risks as to rejected or defective supplies after notice thereof in writing is given to Seller.

5. PAYMENTS, INVOICES AND SHIPPING INSTRUCTIONS. The Seller shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less any deductions as may otherwise be provided herein.

Late Deliveries. In addition to any other rights of default specified herein, if Seller's deliveries are behind the agreed schedule, Buyer shall have the option to require Seller to ship via fastest possible shipment but at no extra cost to Buyer.

6. TERMINATION. The clause entitled "Termination" appearing in FAR 52.249-1 thru 5 as appropriate is incorporated herein by reference and made a part hereof.

7. DEFAULT. The Buyer may by notice of default to the Seller terminate the whole or any part of this contract if (a) the Seller fails to make any delivery of acceptable materials within the time specified herein, or (b) the Seller fails to perform any of the provisions of this contract. Further, the rights of remedies of the Buyer as provided herein shall not be exclusive and are in addition to any other rights and remedies provided by the law and equity elsewhere under this contract.

8. PATENTS, PATENT INFRINGEMENT, PATENT INDEMNITY, ETC.

(a) Patent Rights - This Purchase Order included by this reference a patent rights clause containing all provisions of the Patent Rights Clause contained in Buyer's contract under which this Purchase Order is let, to the extent said Buyer's contract requires such clause or grant of patent rights to be included in subcontracts of this nature; and the Seller grants to the Buyer and the Government all such Patent Rights on the material to be delivered hereunder as is required in such Patent Rights Clause to be given to the Government or as is otherwise elsewhere set forth herein.

(b) Patent Indemnity - It is agreed by the Seller to fully protect, hold harmless, and indemnify the Buyer and stand all expense or loss including counsel fees from any and all suits of law or in equity, and from all damages, claims, and demands for actual or alleged infringement on any United States or foreign patent, trademark, or copyright. (c) Filing of Patent Applications - The clause entitled "Filing of Patent Applications" set forth in FAR 52.227-10 is incorporated herein by reference and shall be applicable if the Purchase Order is classified or to the extent this Purchase Order covers classified subject matter. (d) Royalty Information - Seller warrants that the total price of the Purchase Order does not include costs or charges for royalties totaling more than \$250.00 unless the Seller has made full disclosure thereof prior to the letting of this Purchase Order. The degree of such disclosure shall be governed by FAR 52.227-6 incorporated herein by reference.

9. RIGHTS-IN-DATA. This Purchase Order includes by reference a Data Clause containing all of the provisions of the Data Clause contained in Buyer's contract under which this contract is let; and, the Seller grants to the Buyer and the Government all such rights in the Data delivered here under as is provided in such Data Clause to be given to the Government or as is otherwise specified herein.

10. WARRANTY.

(a) In addition to all other warranties expressed or implied in law, the Seller warrants that the items delivered hereunder will conform to all specifications, or other descriptions furnished by Buyer and will be merchantable, of good material and workmanship and free from defects.

(b) Should the Government require acceptance of items which do not conform to all specifications or other description, payment will be made at an equitable reduction in price.

(c) This warranty shall survive acceptance and run to Buyer, its successors, assigns, customers and users of its products.

11. BUYER-OWNED PROPERTY. Seller shall not use, reproduce, or disclose the contents of any designs, data, information, drawings, etc. delivered hereunder except as is necessary for the performance of this Purchase Order.

12. COMPLIANCE WITH LAW. Seller must comply with all applicable laws, government orders and regulations in performing this Purchase Order. Except as provided under the "Disputes" clause of this Purchase Order, the Purchase Order is a contract made in the State of New Mexico and governed by the laws thereof.

13. ACKNOWLEDGMENTS, AMENDMENTS, AND EXCEPTIONS. The Purchase Order shall be an enforceable contract on the terms stated herein. No modification or amendment of this Purchase Order shall be binding unless made by supplement to this Purchase Order signed by Buyer. The terms and conditions herein shall prevail against all contrary conditions appearing on acknowledgments, acceptances or invoices unless specifically agreed to in writing by an authorized officer of the Buyer.

14. NON-DISCRIMINATION IN EMPLOYMENT. Unless otherwise excepted under Executive Order 11246 as amended or unless otherwise exempt under applicable rules, regulations, or orders of the President's Committee on Equal Employment, this Purchase Order and the Seller are subject to the provisions of the Non-discrimination in Employment Clause set forth in FAR 52.222-26, such clause being incorporated herein by this reference, it being understood that the word "Contractor" contained therein means "the Seller". Further, Seller agrees to include the provisions of said clause in all orders or subcontracts placed hereunder.

15. LIENS. All items to be delivered hereunder, and all property to be returned to Buyer, shall be free and clear of any and all liens and encumbrances whatsoever.

16. FEDERAL ACQUISITION REGULATION. All references to "FAR" shall be the Federal Acquisition Regulations in effect on the effective date of this Purchase Order and the paragraphs referenced herein shall be the paragraph as numbered herein or as may be otherwise renumbered. Whenever the word "Government" appears in any such reference, it shall be deemed to be, "Government and Buyer"; whenever the word "Contractor" appears, it shall be "Seller" and whenever the words "Contracting Officer" appear it shall be "Buyer".

17. STATUTES AND REGULATIONS. To the extent applicable under the appropriate statute or regulations and the Buyer's contract under which this Purchase Order is let, this Purchase Order and any tier subcontract let hereunder is subject to each of the following statutes or provisions and/or clauses of the Federal Acquisition Regulations which is incorporated herein by this reference.

SEE ATTACHED SECTION I FOR REFERENCED FARs.

OTHER TERMS AND CONDITIONS (CHECKED PROVISIONS APPLY)

H.1 INSURANCE CLAUSE (PSL 04 JANUARY 1988) / [I.18 1852.228-75 (OCT 1988)]

During the term of this Purchase Order the Subcontractor agrees to obtain and maintain in full force and effect the following insurance with respect to the work being performed at the Physical Science Laboratory/National Scientific Balloon Facility.

FORM OF COVERAGE	LIMITS OF LIABILITY
Workers' Compensation	Workers' compensation and employer's liability insurance as required by applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Subcontractor's commercial operations that it would not be practical.
Employer's Liability	Employer's liability coverage shall be at least \$100,000 except in states with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.
Comprehensive general (bodily injury) liability*	\$500,000.00 per occurrence.
Automobile/ motor vehicle liability Insurance on the Comprehensive Form of Policy (including non ownership liability and hired-car liability)*	Automobile liability insurance on the comprehensive form of policy providing for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the Subcontract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.
Aircraft	When aircraft are used in connection with performing the Subcontract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

***Comprehensive and general and motor vehicle liability policies shall contain a provision worded as follows:** *"The insurance company waives any right of subrogation against the United States of America with may arise by reason of any payment under the policy."* [I.18]

Not later than the day starting any work under this Purchase Order, the Subcontractor shall furnish PSL evidence of this insurance coverage by the Subcontractor. Subcontractor shall keep said insurance in full force and effect until completion and acceptance of all work hereunder.

Physical Science Laboratory/National Scientific Balloon Facility, reserves the right to disapprove the purchase of any insurance coverage not in Physical Science Laboratory/National Scientific Balloon Facility's interest.

Policies evidencing such insurance as is required herein shall contain an endorsement to the effect that any material change in the coverage adversely affecting Physical Science Laboratory / National Scientific Balloon Facility's interest shall not be effective unless the insurer of the Subcontractor gives written notice of cancellation or change to the Purchasing Agent. When the coverage is provided by self-insurance, the Subcontractor shall not change or decrease the coverage without the Purchasing Agent's approval.

The Subcontractor shall insert the substance of this article in any lower tier-subcontracts under this purchase order where work by a lower tier-subcontractor's employees will be performed at the Physical Science Laboratory/National Scientific Balloon Facility has such insurance in existence before any lower tier-subcontractor employees enter the Physical Science Laboratory/National Scientific Balloon Facility premises.

END OF PROVISION

H.2 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALT I)

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.
- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph

(d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to— (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) Obtain medical treatment for those affected by the material; and (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i) (2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

H.3 FAR 52.223-11 OZONE DEPLETING SUBSTANCES (MAY 2001)

(a) *Definition.* "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as— (1) Class I, including, but

not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

WARNING

*Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.*

** The Contractor shall insert the name of the substance(s).*

(END OF CLAUSE)

H.4 LIMITED RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (GSFC 52.203-91) (JUN 2002) [H.2]

- (a) NASA may find it necessary to release information submitted by the Contractor, either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by NASA. Business information that would ordinarily be entitled to confidential treatment may be included in the information released to these individuals. Accordingly, by submission of this proposal, or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).
- (b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to, the following:
- (1) To other Agency contractors and subcontractors, and their employees tasked with assisting the Agency in handling and processing information and documents in the evaluation, the award or the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to NASA's technical evaluation panels;
 - (2) To NASA contractors and subcontractors, and their employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency.
- (c) Except where otherwise provided by law, NASA will permit the limited release of CBI under subparagraphs (1) or (2) only pursuant to non-disclosure agreements signed by the assisting contractor or subcontractor, and their individual employees who may require access to the CBI to perform the assisting contract).
- (d) NASA's responsibilities under the Freedom of Information Act are not affected by this clause.
- (e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(END OF CLAUSE)

**H.5 1852.219-75 SMALL BUSINESS SUBCONTRACTING
REPORTING (MAY 1999)**

- (a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.
- (b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219-9.

(END OF CLAUSE)

**H.6 CROSS-WAIVER OF LIABILITY CONCERNING INTERNATIONAL
AGREEMENTS [H.16]**

- (a) The objective of this clause is to provide for a cross-waiver of liability in the interest of encouraging participation in the area of scientific ballooning.
- (b) For purposes of this clause:
 - (1) The term "the Contractor" means the person or entity who is a party to this contract, other than the United States Government and NASA.
 - (2) The term "Partner State" means the Government of any foreign state or country which signs an agreement with the United States Government or NASA for participation in scientific ballooning activities. It includes any cooperating agency of a Partner State.
 - (3) The term "Scientific Ballooning Operations" means all launch vehicle activities and payload activities on Earth, in the atmosphere, in outer space, or in transit between Earth, the atmosphere and/or outer space related to scientific ballooning, it includes, but is not limited to (i) research, design, development, test, manufacture, assembly, integration, operation, or use of launch: or transfer vehicles or a payload, as well as related support equipment and facilities and services; and (ii) all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (4) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.
 - (5) The term "Payload" means all property to be flown or used on or in a launch vehicle.
 - (6) The term "related entity" means (i) a Contractor or Subcontractor of a Partner State, of the United States Government or of the Contractor, at any tier; (ii) a user, customer, or other associate of a Partner State or of the United States Government, at any tier. The terms Contractors and Subcontractors include suppliers of any kind.
 - (7) The term "damage" means (i) bodily injury to, or other impairment of health of~ or death of~ any person; (ii) damage to, loss of, or loss of use of~ any property; (iii) loss of revenue or profit; (iv) other direct, indirect or consequential damage-
- (c) The Contractor recognizes that the United States Government or NASA may enter into international agreements, contracts or otherwise, with a Partner State for Scientific Ballooning Operations. As a condition of such agreements, NASA may agree that neither the United States or its related entities or certain of its related entities, nor the Partner State or its related entities

or certain of its related entities will make any claims against the others. Accordingly, if such an international agreement, contract or otherwise, is entered into by the United States Government or NASA, the Contractor agrees that they shall not make any claims, based on damage arising from: Scientific Ballooning Operations, against any of the following parties that are covered by a cross-waiver in any such international agreement: (1) a Partner State; (2) a related entity of a Partner State; (3) except as provided for in paragraph (f) (1) below, a related entity of the United States; (4) Government; and (4) except as provided for in paragraph (f) (1) below, employees of any of the entities identified in paragraphs (c) (1) through (3) above.

- (d) In addition, the Contractor agrees, as necessary, to extend the cross-waiver of liability as set forth in paragraph (c) above to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims, based on damage arising out of Scientific Ballooning Operations, against the entities or persons identified in paragraphs (c)(1) through (c)(4) above, except as provided for in paragraph (f)(1).
- (e) This cross-waiver in paragraphs (c) and (d) above shall apply only if the person, entity, or property causing the damage is involved in Scientific Ballooning Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Scientific Ballooning Operations. The cross-waiver in paragraphs (c) and (d) above applies to any claims for damage, whatever the legal basis for such claims, including negligence.
- (f) Notwithstanding the other provisions of this clause, the cross-waiver of liability shall not be applicable to (1) claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier; (ii) the Contractor and its related entities; or (iii) the Contractor's related entities; (2) claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person; (3) claims for damage caused by willful misconduct; and (4) intellectual property claims.
- (g) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (h) This clause, including this paragraph (h), shall be included in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties, where work is to be performed in support of Scientific Ballooning Operations.

(END OF PROVISION)

H.7 USE OF RURAL AREA SMALL BUSINESSES (1852.219-74) (SEP 1990) [I-15]

- (a) *Definitions.*

"Rural area" means any county with a population of fewer than twenty thousand individuals. "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

- (c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.
- (d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

(END OF CLAUSE)

H.8 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

(END OF CLAUSE)

H.9 52.225-1 BUY AMERICAN ACT—SUPPLIES (MAY 2002)

- (a) *Definitions.* As used in this clause—

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means— (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means— (1) An unmanufactured end product mined or produced in the United States; or (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. “End product” means those articles, materials, and supplies to be acquired under the contract for public use. “Foreign end product” means an end product other than a domestic end product.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- (b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

(END OF CLAUSE)

H.10 FAR § 36.204 DISCLOSURE OF THE MAGNITUDE OF CONSTRUCTION PROJECTS.

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government’s estimate. Therefore, the estimated price of this project is described as ###choose one of the following price ranges###:

- (a) Less than \$25,000.
- (b) Between \$25,000 and \$100,000.
- (c) Between \$100,000 and \$250,000.
- (d) Between \$250,000 and \$500,000.
- (e) Between \$500,000 and \$1,000,000.
- (f) Between \$1,000,000 and \$5,000,000.
- (g) Between \$5,000,000 and \$10,000,000.
- (h) More than \$10,000,000.

(END OF CLAUSE)

SECTION I

NSBF'S GENERAL PROVISIONS- FAR CLAUSES

NSBF'S SECTION I (INCLUDING CONSTRUCTION)

GENERAL PROVISIONS – FAR CLAUSES

In accordance with FAR Clause 52.252-2 below, and with Section I of PSL's Prime Contract No. NAS5-03003 with NASA, the following clauses are incorporated by References instead of the full text. Except for "commercial items", the clauses in Section I are required with the exception of 52.243-1, 52.243-1 ALT II, which are applicable only of checked. In the other sections, only those clauses with a check in the box in the left margin are applicable.

FAR 52.252.2 Clauses Incorporated by Reference:

This subcontract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Purchasing Agent will make their full text available. All references to the Government shall include, in addition to the United States Government, New Mexico State University / Physical Science Laboratory, and the National Scientific Balloon Facility. All references to the Contracting Officer shall include the Purchasing Agent of the National Scientific Balloon Facility or his or her designee. All references to the Contractor shall include the Offeror, Bidder or Vendor.

COMMERCIAL ITEMS AS DEFINED BY FAR 52.202-1

CLAUSE NO	TEXT
52.244-6	<p>SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2001)</p> <p>(a) <i>Definitions.</i> As used in this clause—"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.</p> <p>(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.</p> <p>(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:</p> <ul style="list-style-type: none"> (i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities. (ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246). (iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)). (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793). (v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUNE 2000) (46 U.S.C. Appx1241) (flowdown not required for subcontracts awarded beginning May 1, 1996). <p>(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.</p> <p>(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.</p> <p>(End of clause)</p> <p>NOTE – The Vendor's attention is called to the fact that other clauses may be incorporated below by reference depending upon the requirements for pricing information and other matters.</p>

TO REDUCE PAPERWORK, THIS SECTION I OMTS THE FOLLOWING PAGES WHICH DO NOT APPLY TO THIS PROCUREMENT – 2, 4

<input checked="" type="checkbox"/> 52.246-2	Inspection of Supplies – Fixed Price (APR 1984)
<input type="checkbox"/> 52.246-4	Inspection of Services – Fixed Price (AUG 1996)
<input checked="" type="checkbox"/> 1852.204-74	Central Contractor Registration (May 2002)
<input checked="" type="checkbox"/> 1852.208-81	Restrictions on Printing and Duplicating (OCT 2001)
<input checked="" type="checkbox"/> 1852.223.70	Health and Safety (APR 2002))
<input checked="" type="checkbox"/> 1852.242-72	Observation of Legal Holidays (AUG 1992) Alternate II (OCT 2000)
<input checked="" type="checkbox"/> 1852.244-70	Geographic Participation in the Aerospace Program (APR 1985)
<input type="checkbox"/> H2	

Section IIA GENERAL

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input type="checkbox"/> 52.214-34	Submission of Offers in the English Language (APR 1991)
<input type="checkbox"/> 52.214-35	Submission of Offers in U.S. Currency (APR 1991)
<input checked="" type="checkbox"/> 52.216-7	Allowable Cost and Payment (FEB 1997)
<input type="checkbox"/> 52.216-18	Ordering (OCT 1995) Indefinite Delivery
<input type="checkbox"/> 52.216-19	Order Limitations (OCT 1995) Indefinite Delivery
<input type="checkbox"/> 52.216-22	Indefinite Quantity (OCT 1995) Indefinite Delivery
<input checked="" type="checkbox"/> 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)
<input type="checkbox"/> 52.222-3	Convict Labor (AUG 1996)>\$2,500 unless subject to Walsh-Healey Public Contracts Act
<input checked="" type="checkbox"/> 52.222-20	Walsh-Healey Public Contracts Act (DEC 1996) (>\$10,000)
<input type="checkbox"/> 52.222-9	Notification of Visa Denial (APR 1984) foreign acquisition
<input type="checkbox"/> 52.222-41	Service Contract Act of 1965, As Amended (MAY 1989) FP SVC
<input checked="" type="checkbox"/> 52.227-1	Authorization and Consent (JUL 1995)
<input checked="" type="checkbox"/> 52.222-11	Patent Rights – Retention by Contractor (Short Form) (JUN 1989) as modified by NASA FAR Supplement 18-52.227-11 (R&D Experimental)
<input checked="" type="checkbox"/> 52.227-14	Rights in Data – General (JUN 1987) as modified by NASA FAR Supplement 18-52.227-14 (PN 89-72)(FP Sup & Svc)
<input checked="" type="checkbox"/> 52.228-5	Insurance—Work on a Government Installation (JAN 1997))
<input checked="" type="checkbox"/> 52.228-7	Insurance – Liability to Third Persons (MAR 1996)
<input checked="" type="checkbox"/> 52.229-10	State of New Mexico Gross Receipts and Compensating Tax (OCT 1988)
<input type="checkbox"/> 52.232-8	Discounts for Prompt Payment (MAY 1997)
<input type="checkbox"/> 52.223-11	Extras (APR 1984)
<input type="checkbox"/> 52.232-17	Interest (JUN 1996)
<input type="checkbox"/> 52.232-18	Availability of Funds (APR 1984)
<input type="checkbox"/> 52.232-19	Availability of Funds for the Next Fiscal Year (APR 1984)
<input type="checkbox"/> 52.232-22	Limitation of Funds (APR 1984)
<input type="checkbox"/> 52.232-23	Assignment of Claims (JAN 1986)
<input checked="" type="checkbox"/> 52.232-25	Prompt Payment (MAY 1997) (b) (2), second sentence shall have a 30 day period for any financing payments, except Commercial Items
<input type="checkbox"/> 52.232-33	Mandatory Information for Electronic Funds Transfer Payment (AUG 1996)
<input type="checkbox"/> 52.237-2	Protection of Government Buildings, Equipment, and Vegetation (APR 1984)
<input type="checkbox"/> 52.237-3	Continuity of Services (JAN 1991)
<input type="checkbox"/> 52.242-1	Notice of Intent to Disallow Costs (APR 1984)
<input type="checkbox"/> 52.242-4	Certification of Indirect Cost (JAN 1997)
<input checked="" type="checkbox"/> 52.242-13	Bankruptcy (JUL 1995)
<input checked="" type="checkbox"/> 52.242-15	Stop-Work Order (AUG 1989) Alternate I (APR 1984)
<input type="checkbox"/> 52.244-2	Subcontracts (FEB 1997) Alternate I (AUG 1996) (paragraph (e) is "Subcontracts for Balloons and Balloon Materials")
<input checked="" type="checkbox"/> 52.245-2	Government Property (Fixed-Price Contracts) (DEC 1989)
<input type="checkbox"/> 52.246-25	Limitation of Liability – Services (FEB 1997)
<input checked="" type="checkbox"/> 52.247-1	Commercial Bill of Lading Notations (APR 1984)
<input checked="" type="checkbox"/> 52.247-34	F.O.B. Destination (NOV 1991)
<input checked="" type="checkbox"/> 52.247-63	Preference for U.S. – Flag Air Carriers (JAN 1997)
<input checked="" type="checkbox"/> 52.247-64	Preference for Privately Owned U.S. Commercial Vessels (AUG 1996)
<input checked="" type="checkbox"/> 52.249-1	Termination for Convenience of the Government (Fixed-Price)(Short Form)(APR1984)
<input type="checkbox"/> 52.249-4	Termination for Convenience of the Government (Services)(Short Form)(APR 1984)
<input type="checkbox"/> 52.249-6	Termination (Cost-Reimbursement) (SEP 1996)
<input checked="" type="checkbox"/> 52.249-8	Default (Fixed-Price Supply and Service)(APR 1984)
<input checked="" type="checkbox"/> 52.249-14	Excusable Delays (APR 1984)
<input type="checkbox"/> 52.251-1	Government Supply Sources (APR 1984)
<input type="checkbox"/> 52.251-2	Interagency Fleet Management System (IFMS) Vehicles and Related Services (JAN 1991)
<input checked="" type="checkbox"/> 52.253-1	Computer Generated Forms (JAN 1991)
<input checked="" type="checkbox"/> 18-52.227-70	New Technology (JULY 1995) NASA FAR Supplement
<input checked="" type="checkbox"/> 18-52.232-81	Contract Funding (JUN 1990) NASA FAR Supplement

Section IIB CONSTRUCTION CONTRACTS (where required)

Clause No.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
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Section III Exceeds \$25,000

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input type="checkbox"/> 52.229-6	Taxes – Foreign Fixed-Price Contracts (JAN 1991)
<input type="checkbox"/> 52.229-7	Taxes – Fixed Price Contracts with Foreign Governments (JAN 1991)

Section IV Exceeds \$100,000

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input type="checkbox"/> 52.222-2	Payment for Overtime Premiums (JUL 1990) C/R
<input checked="" type="checkbox"/> 52.248-1	Value Engineering (MAR 1989)
<input checked="" type="checkbox"/> 52.249-2	Termination for Convenience of the Government (Fixed-Price)(SEP 1996)

Section V Exceeds \$500,000

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input checked="" type="checkbox"/> 52.215.23	Subcontractor Cost or Pricing Data – Modifications (OCT 1997)
<input checked="" type="checkbox"/> 52.215-25	Price Reduction for Defective Cost or Pricing Data – Modifications (OCT 1997)

Section VI Exceeds \$1,000,000

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input type="checkbox"/> 52.222-28	Equal Opportunity Pre-Award Clearance of Subcontracts (APR 1984)
<input type="checkbox"/> 52.243-7	Notification of Changes (APR 1984)

Section VII Sealed Bid

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input checked="" type="checkbox"/> 52.214-1	Solicitation Definitions – Sealed Bidding (JUL 1987)
<input checked="" type="checkbox"/> 52.214-2	Type of Business Organization – Sealed Bidding (JUL 1987)
<input checked="" type="checkbox"/> 52.214-3	Amendments to Invitations for Bids (DEC 1989)
<input checked="" type="checkbox"/> 52.214-4	False Statements in Bids (APR 1984)
<input checked="" type="checkbox"/> 52.214-5	Submission of Bids (MAR 1997)
<input checked="" type="checkbox"/> 52.214-6	Explanation of Prospective Bidders (APR 1984)
<input checked="" type="checkbox"/> 52.214-7	Late Submissions, Modifications, and Withdrawals of Bids (MAY 1997)
<input checked="" type="checkbox"/> 52.214-9	Failure to Submit Bid (JUL 1995)
<input checked="" type="checkbox"/> 52.214-10	Contract Award – Sealed Bidding (JUL 1990)
<input checked="" type="checkbox"/> 52.214-12	Preparation of Bids (APR 1984)
<input type="checkbox"/> 52.214-14	Place of Performance – Sealed Bidding (APR 1985)(Do not use unless we specify place of performance in IFB)
<input checked="" type="checkbox"/> 52.214-15	Period for Acceptance of Bids (APR 1984)
<input checked="" type="checkbox"/> 52.214-17	Affiliated Bidders (APR 1984)
<input type="checkbox"/> 52.214-20	Bid Samples (APR 1984)
<input type="checkbox"/> 52.214-21	Descriptive Literature (APR 1984)
<input type="checkbox"/> 52.214-22	Evaluation of Bids for Multiple Awards (MAR 1990)
<input type="checkbox"/> 52.214-23	Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (MAY 1997)
<input type="checkbox"/> 52.214-24	Multiple Technical Proposals (APR 1984)(Step One of Two-Step Acquisition)
<input type="checkbox"/> 52.214-25	Step Two of Two-Step Sealed Bidding (APR 1985)
<input type="checkbox"/> 52.214-26	Audit and Records (OCT 1997)

Section VIII Request for Proposal

CLAUSE NO.	CLAUSES REQUIRED WHEN APPLICABLE (CHECKED)
<input type="checkbox"/> 52.215-1	Instructions to Offerors—Competitive Acquisition (OCT 1997)(award without discussions)
<input type="checkbox"/> 52.215-1	Instructions to Offerors—Competitive Acquisition (OCT 1997) Alternate I (OCT1997)(award after discussions)
<input checked="" type="checkbox"/> 52.227-23	Rights to Proposal Data (Technical)(JUN 1987)

SECTION J

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

- SECTION A- STANDARD FORM 33 (REV 9-97)
- SECTION B- INVITATION FOR BID (IFB) FORM
- SECTION H- SPECIAL CONTRACT REQUIREMENTS
- SECTION I- GENERAL PROVISIONS- FAR CLAUSES
- SECTION K- REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

SECTION K

REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

- Form to be completed, signed and returned with sealed bid package.

SECTION K – REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

Certifications K-1 through K-8 are applicable to all IFBs and RFPs. The other Representations and Certifications believed to be applicable to this procurement are indicated by an “X” in the check block before the numbers.

All references to the Government shall include, in addition to the United States Government, New Mexico State University / Physical Science Laboratory, and the National Scientific Balloon Facility. All references to the Contracting Officer shall include the Purchasing Agent of the National Scientific Balloon Facility or his or her designee. All references to the Contractor shall include the Offeror, Bidder or Vendor.

TO REDUCE PAPERWORK, THIS SECTION K OMITTS THE FOLLOWING PAGES WHICH DO NOT APPLY TO THIS PROCUREMENT – PAGES 10-13,22-29.

SECTION K: REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

INSTRUCTIONS TO THE OFFEROR, BIDDER, OR VENDOR. Certain representations and certifications must be made by the offeror and must be filled in as appropriate. The signature of the offeror, on the last page constitutes the making of the applicable representations and certifications. Award of any contract to the offeror shall be considered to have incorporated the applicable representations and certifications by reference in accordance with FAR 15.406-1(b).

Certain representations and certifications are applicable only if an "X" has been entered.

All references to the Government shall include, in addition to the United States Government, New Mexico State University / Physical Science Laboratory, and the National Scientific Balloon Facility. All references to the Contracting Officer shall include the Purchasing Agent of the National Scientific Balloon Facility or his or her designee. All references to the Contractor shall include the Offeror, Bidder or Vendor.

BUSINESS NAME: _____
(Type or Print)

K-1 TYPE OF BUSINESS ORGANIZATION

The bidder, offeror or quoter, by checking the applicable box, represents that:

- (a) It operates as a corporation incorporated under the laws of the State of _____, an individual, a partnership, a nonprofit organization, or a joint venture; OR
- (b) If the bidder is a foreign entity, it operates as an individual, a partnership, a nonprofit organization, a joint venture, or a corporation, registered for business in _____(country).

END OF PROVISION

K-2 PLACE OF PERFORMANCE

- (a) The bidder, offeror or quoter, in the performance of any contract resulting from this solicitation, intends, does not intend (check applicable box) to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this bid, proposal or quote.
- (b) If the bidder, offeror or quoter checks "intends" in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, County, State, Zip Code)	Name and Address of Owner and operator of the Plant or Facility if Other than Bidder, Offeror or Quoter

END OF PROVISION

K-3 52.204-3 TAXPAYER IDENTIFICATION (JUN 1997)

(a) *Definitions.*

"Common parent", as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the Offeror is a corporate entity, an unincorporated entity (*e.g.*, sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) *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 U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of a Federal, state or local government;

Other. State basis. _____

(d) **Corporate Status. ★**

"M" - Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

"C" - Other corporate entity;

"N" - Not for profit corporation

Not a corporate entity:

"T" - Sole proprietorship

- "P" - Partnership
- Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).
- (e) Common Parent.
 - Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
 - Name and TIN of common parent:
Name: _____ TIN: _____

END OF PROVISION

K-4 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [insert NAICS code]. (2) The small business size standard is _____ [insert size standard]. (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) Representations.
 - (1) The offeror represents as part of its offer that it is, is not a small business concern.
 - (2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(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.
 - (3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]
The offeror represents as part of its offer that it (is, (is not a women-owned small business concern.
 - (4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it (is, (is not a veteran-owned small business concern.
 - (5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(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 (b)(6)(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.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) 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.

(c) Definitions. As used in this provision—

“Service-disabled veteran-owned small business concern” — (1) Means a small business concern— (i) 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 (ii) 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. (2) 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).

“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 the size standard in paragraph (a) of this provision. “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.

(d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall— (i) Be punished by imposition of fine, imprisonment, or both; (ii) Be subject to administrative remedies, including suspension and debarment; and (iii) Be ineligible for participation in programs conducted under the authority of the Act.

END OF PROVISION

K-5 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the contracting Officer or designee, in writing, _____* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

*The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

- (b) If there has been no change affecting the quantity of activity, of the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall –
 - (1) Be submitted in writing;
 - (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
 - (3) Cite the contract number on which the prior notification was submitted and contracting office to which it was submitted.
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIK-STD 129 in effect on the date of the contract.
- (d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(END OF CLAUSE)

K-6 52.225-1 BUY AMERICAN CERTIFICATE (MAY 2002)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—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.
- (b) Foreign End Products: [List as necessary]
- (c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

END OF CLAUSE

K-7 WAGE DETERMINATION – MINIMUM WAGES AND CONFORMABILITY)

Only Applies to Purchase Order Covered Under SERVICE CONTRACT ACT OF 1965

By submission of this offer, in response to this solicitation, the offeror hereby certifies that to the best of his knowledge, his proposal is in conformance with the Department of Labor Wage Determination required by the Service Contract of 1965, was amended and applicable to this procurement, that all minimum rates and fringe benefits specified have been considered in the preparation of this proposal and that the conformability requirements between designated service employees and other contract personnel have been considered and appropriately reflected in his response .

END OF PROVISION

K-8 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage – Fringe Benefits

(END OF CLAUSE)

K-9 52.247-53 FREIGHT CLASSIFICATION DESCRIPTION (APR 1984)

Offerors are requested to indicate below the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as offeror uses for commercial shipment. This description should include the packing of the commodity (box crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.), the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to determine the classification description most appropriate and advantageous to the Government.

Offeror understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

Table 1

FOR FREIGHT CLASSIFICATION PURPOSES, OFFEROR DESCRIBES THIS COMMODITY AS

END OF PROVISION

K-10 52.227-14 RIGHTS IN DATA—GENERAL AS MODIFIED BY 1852.227-14

(a) *Definitions.* “Computer software,” as used in this clause, means computer programs, computer data bases, and documentation thereof.

“Data,” as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data,” as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

“Limited rights,” as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(2) if included in this clause.

“Limited rights data,” as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

“Restricted computer software,” as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data,” as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

“Unlimited rights,” as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in— (i) Data first produced in the performance of this contract; (ii) Form, fit, and function data delivered under this contract; (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to— (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause; (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause; (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c) *Copyright*

- (1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; *provided*, however, that if

such data are computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

- (3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.*

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (3) (i) The Contractor agrees not to establish claim to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission. (ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee. (iii) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert".

(e) *Unauthorized marking of data.*

- (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings. (i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings; (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions. (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be

cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

- (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.*

- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor — (i) Identifies the data to which the omitted notice is to be applied; (ii) Demonstrates that the omission of the notice was inadvertent; (iii) Establishes that the use of the proposed notice is authorized; and (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any

incorrect notices. (g) *Protection of limited rights data and restricted computer software.*

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery the Government are to be treated as limited rights data and restricted computer software. (2) [Reserved]

(3) [Reserved]

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor’s obligations to the Government under this contract. If a subcontractor refuses accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in clause shall imply a license to the Government under patent or be construed as affecting the scope of any license other right otherwise granted to the Government.

REPRESENTATION CONCERNING DATA RIGHTS

Offeror has reviewed the requirements for the delivery of data or software and states (offeror check appropriate block)-

- None of the data or software proposed for fulfilling such requirement qualifies as a 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:

END OF PROVISION

K-11 52.222-18 CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2001)

(a) *Definition.*

"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.

(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(c) *Certification.* The Government will not make award to an offeror unless the offeror, by checking the appropriate block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

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

(2) The offeror may supply an end product listed in paragraph (b) 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 such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

END OF PROVISION

X K-12 52.222-19 WALSH-HEALEY PUBLIC CONTRACTS ACT REPRESENTATION (APR 1984)

Applies if Procurement is over \$10,000

The offeror represents as a part of this offer that the offeror is or is not a regular dealer in, or is or is not (a manufacturer of, the supplies offered.

END OF PROVISION

X K-13 52.222-21 CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984)

Applies only if Procurement is over \$10,000

(a) "Segregated facilities," as used in waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, this provision, means any rooms, and wash rooms, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that

it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

- (c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time period) it will
- (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain the certifications in the files, and
 - (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES.**

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontract during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements is prescribed in 18 U.S.C. 1001.

END OF PROVISION

K-14 Applies if Procurement is over \$10,000

**52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS
(FEB 1999)**

Applies if Procurement is over \$10,000

The offeror represents that—

- (a) It has (has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation; the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;
- (b) It (has (has not, filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

END OF PROVISION

K-15 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

Applies if Procurement is over \$10,000

The offeror represents that (a) it () has developed and has on file, () has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it () has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

END OF PROVISION

K-16 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

Applies if Procurement is over \$25,000

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that--
- (i) The offeror and/or any of its Principals--
 - (A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (B) Have have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - (C) Are or not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.
 - (ii) The Offeror has has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal Agency.
 - (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to

Prosecution Under Section 1001, Title 18, United States Code.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsive.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

END OF PROVISION

K-20 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

Applies if Procurement is over \$100,000

- (a) The offeror certifies that--
 - (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to--
 - (i) Those prices;
 - (ii) The intention to submit an offer; or
 - (iii) The methods or factors used to calculate the prices offered.
 - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory--
 - (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or
 - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision _____ *[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization]*;
 - (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; and
 - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a) (3) of this provision.
- (c) If the offeror deletes or modifies subparagraph (a) (2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

END OF PROVISION

K-18 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

Applies if Procurement is over \$100,000

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-312, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation,

renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

- (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
- (3) He or she will include the language of this certification in all subcontract award at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352. Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by the provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each failure.

END OF PROVISION

K-19 52.223-1 CLEAN AIR AND WATER CERTIFICATION (APR 1984)

Applies if Procurement is over \$100,000

The offeror certifies that-

- (1) Any facility to be used in the performance of this proposed contract is , is not listed on the Environmental Protection Agency List of Violating Facilities;
- (2) The offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the offer or proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (3) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

END OF PROVISION

K- 20 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

Applies if Procurement is over \$100,000

- (a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.
- (b) By signing this offer, the offeror certifies that-
 - (1) As the owner and operator of facilities that will be used in the performance of this

contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned and operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (*Check each block that is applicable.*)

- (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
- (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CRF 372.27, provided an appropriate certification form has been filed with EPA);
- (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation; or
- (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

END OF PROVISION

K-21 52.225-8 BUY AMERICAN ACT--TRADE AGREEMENTS--BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 1994)
APPLIES IF PROCUREMENT IS OVER \$100,000

- (a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act--Trade Agreements--Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 24.2501 of the Federal Acquisition Regulation.
- (b) Excluded end products:

Line Item No.	Country of Origin
_____	_____
_____	_____

(List as necessary)

- (c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

- (1) The offeror certifies that the following supplies qualify as “designated or NAFTA country end products” as those terms are defined in the clause entitled “Buy American Act--Trade Agreements--Balance of Payments Program.”

[Insert line item numbers]

- (2) The offeror certifies that the following supplies qualify as “Caribbean Basin country end products” as that term is defined in the clause entitled “Buy American Act--Trade Agreements--Balance of Payments Program.”

[Insert line item number]

- (d) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation.

END OF PROVISION

K-22 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)

Applies if Procurement is over \$500,000

- (a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.
- (i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

- (ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include--
 - (A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;
 - (B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
 - (C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
- (2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:
 - (1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
 - (2) As soon as practicable after agreement on price, but before a contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

END OF PROVISION

K-23 1852.227-70 NEW TECHNOLOGY (MAY 2002) [G.9]

(a) Definitions.

"Administrator," as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

"Contract," as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this clause, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the

Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

"Nonprofit organization," as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Reportable item," as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

"Small business firm," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

"Subject invention," as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

- (ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.
 - (2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.
 - (3) Waiver of rights.
 - (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of Section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.
 - (ii) As provided in 14 CFR 1245, Subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.
- (c) Minimum rights reserved by the Government.
 - (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR Section 1245, Subpart 1, the Government reserves--
 - (i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and
 - (ii) Such other rights as stated in 14 CFR 1245.107.

- (2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.
- (d) Minimum rights to the Contractor.
 - (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
 - (2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.
- (e) Invention identification, disclosures, and reports.
 - (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a

description of such procedures for evaluation and for determination as to their effectiveness.

- (2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.
- (3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.
- (4) The Contractor shall furnish the Contracting Officer the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.
 - (ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.
- (5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.
- (6) The Contractor agrees, subject to paragraph 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject

invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

- (f) Examination of records relating to inventions.
 - (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--
 - (i) Any such inventions are subject inventions;
 - (ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and
 - (iii) The Contractor and its inventors have complied with the procedures.
 - (2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.
 - (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- (g) Withholding of payment (this paragraph does not apply to subcontracts).
 - (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--
 - (i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;
 - (ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;
 - (iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or
 - (iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.
 - (2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
 - (3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.
 - (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other

provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

- (h) Subcontracts.
- (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall--
 - (i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and
 - (ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.
 - (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--
 - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
 - (3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.
 - (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
 - (5) The subcontractor will retain all rights provided for the Contractor in the clause of subparagraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
 - (i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the

Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(END OF CLAUSE)

SIGNATURE CERTIFICATION SHEET

Complete, sign and return with Invitation For Bid (IFB), Request For Proposal (RFP), Request For Quote (RFQ), or in connection with any Purchase Order (PO) issued to your company.

Name and Address of Company Submitting Bid/Proposal or Quote (Street, City, State and ZIP Code) (Type or Print)	Area Code and Telephone Number
Signature of Person Authorized to Sign Bid/Proposal or Quote	Date of Bid/Proposal or Quote
Signer's Name and Title (Type or Print)	Purchase Order Number

SECTION L

INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

SEALED BID DELIVERIES

- The National Scientific Balloon Facility is located approximately 5-7 miles outside of Palestine, Texas, adjacent to the Palestine Municipal Airport.
- Federal Express and UPS do not guarantee priority deliveries to this location because NSBF is considered a remote delivery location.
- Allow enough time to have your sealed bid delivered by the response date of **10/05/04 no later than 4:00PM Central Daylight Standard Time.**
- **No facsimiles or electronic transmissions accepted on sealed bids.**

SECTION M

EVALUATION FACTORS OF AWARD

- Factor 1: Bidder's compliance as required under this solicitation.
- Factor 2: Price and other related factors.
- Factor 3: Ability to meet delivery date requirement.
- Factor 4: Determination of bidders responsibility.