Physical Science Laboratory
COLUMBIA SCIENTIFIC BALLOON FACILITY
Purchasing Department
purchasing@csbf.nasa.gov

IFB (Invitation for Bid) Solicitation Form

Print Form

APR-203-NI-F Rev A

NEW MEXICO STATE UNIVERSITY
BILLING: P. O. Box 319, Palestine, TX 75802-0319
SHIPPING: 1510 E FM Road 3224, Palestine, TX 75803
PHONE: (903) 729-0271 (Switchboard)
FAX: (903) 723-8054

An equal opportunity employer.

Buyer-Phone-Email: Nancy Caudle / 903-723-8042 / nancy.caudle@csbf.nasa.gov

IFB No. R0089628 **ALL Bids due by 4PM on** Jun 9, 2010

IFB Date 5/19/10

BIDDER's INFORMATION:

Company

Address

City State Zip Code

Country

Phone Number

email

Title of Signer

Name of Signer

Signed By

- ☐ A site visit by the Bidder is Required. (See Section L for details).
- ☐ Checked box indicates this is a two-step bid.
- ☒ This is a BEST VALUE procurement. See FAR 15.102
- ☐ This is a construction project! Special Provisions apply
- ☐ A bid bond and/or performance bond are required with your bid. (See Section L for Details).
- ☐ A bid sample is required (see Section L for details).
- ☒ Public Notice of this procurement opportunity was provided by:
  - ☒ Posting an abstract at http://web.sba.gov/subnet.
  - ☒ Publishing a notice in the classified advertisement pages of the following newspaper.

Newspaper: Palestine , TX Herald-Press

TOTAL PAGES IN IFB 34

IMPORTANT

Email and/or electronic transmittal (fax) of bids are NOT accepted.

"NO BID" does not require a return of this document.

Any questions regarding this Invitation for Bid please contact the Buyer identified above by phone, email, or in writing. However, formal questions must be in writing.

Any resultant contract shall be a subcontract under National Aeronautics and Space Administration Prime Contract NAS5-03003.

This solicitation and any resultant contract incorporate by reference various clauses from the prime contract and/or the Federal Acquisition Regulation (FAR) or NASA FAR Supplement (NFARS).

BIDS MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE IFB NUMBER AND OPENING DATE CLEARLY ON THE BOTTOM LEFT HAND SIDE OF THE FRONT OF THE EVELOPE.

Sealed bids will be received until the above specified date and local time; then publicly opened at the Columbia Scientific Balloon Facility and read aloud.

Buyer reserves the right to cancel or amend this solictation at any time, including before or after receipt and opening of bids.

ALL ITEMS OFFERED MUST BE NEW UNLESS OTHERWISE SPECIFIED. EXACT EQUIVALENT ACCEPTABLE, UNLESS OTHERWISE SPECIFIED. IF QUOTING EQUIVALENT, WRITTEN LITERATURE, OR SAMPLES, MUST BE ATTACHED. IF NOT ATTACHED THE BID MAY BE DISQUALIFIED.

TIME IS OF THE ESSENCE IN PERFORMING THIS SUBCONTRACT.

COURIER DELIVERY -- Offeror assumes risk of delivery of bid by any method other than United States Postal Service Certified or Express Mail. For information only United Parcel Service delivers at about 10:00AM. FedEX and other methods may not arrive until AFTER 4PM.

ATTENTION: Signature and submittal of this document creates a legally binding offer to contract on the terms stated.

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- ☒ The resulting purchase order will be placed as a subcontract to NASA Contract NAS5-03003
- ☒ CSBF reserves the right to cancel or amend this solicitation at any time prior to award.
- ☒ This solicitation includes Representations and Certifications attached hereto which must be completed /signed and returned.
- ☒ This solicitation includes an attached statement of work or specifications that the goods or services must comply with.
- ☒ This solicitation includes attached terms and conditions which shall be made a part of any resulting order.

PARTS OF THIS SOLICITATION

- ☒ A. Solicitation form (this document).
- ☒ B. Supplies or services and prices (Complete price information here).
- ☒ C. Description / Specifications.
- ☒ D. Packaging and Marking.
- ☒ E. Inspection and Acceptance.
- ☒ I. Contract Clauses (General Provisions).
- ☒ J. List of documents, exhibits, and other attachments.
- ☒ K. Representations and Certifications and Other Statements of Bidders
- ☒ L. Instructions, Conditions, and Notices to Bidders
- ☒ M. Evaluation Factors for Award.

Offeror's Price to be Quoted: FOB DESTINATION PREPAY & ADD

FINAL DELIVERY Required by: Jun 30, 2011 SHIP TO Palestine, TX

CSBF FORM APR-212-NI-F IFB Boilerplate follows.

Please provide Educational Discount if available.
New Mexico State University is tax exempt
in Texas and in New Mexico.

INVITATION FOR BID
(IFB)

PHYSICAL SCIENCE LABORATORY

NEW MEXICO STATE UNIVERSITY
PURCHASING GROUP

COLUMBIA 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
EMAIL: Nancy.Caudle@csbf.nasa.gov

BID NO: R0089628

DATE: 05/19/2010

BUYER: Nancy Caudle

BUYER'S DIRECT PHONE: 903/723-8042

AN EQUAL OPPORTUNITY EMPLOYER

TO:

NO ELECTRONIC OR FACSIMILES ACCEPTED ON SEALED BIDS.

Deadline for questions – see below.

Sealed bids subject to the conditions on the reverse side hereof will be received at the office of the Purchasing Department on this form **UNTIL 4 o'clock p. m., Central Time, 03/23/2010**, and then publicly opened, for furnishing supplies and/or services as listed below, **FOB Physical Science Laboratory, Columbia Scientific Balloon Facility, Palestine, Texas 75802-0319.**

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL	DELIVERY
1	6 each	RMS-3400ATX Rackmount PC, or Equivalent REFER TO FORM APR-212-NI-F-IFB Boilerplate for specifications			

(BIDS MUST BE RECEIVED IN A SEALED ENVELOPE – NO FAXES ACCEPTED – Refer to Section L)

1. Questions: All questions regarding this IFB must be submitted in writing to the Buyer, Nancy Caudle. 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 ***06/03/2010, 12:00 NOON CENTRAL TIME*****

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 / Columbia 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)
_____
(Printed Name)

TITLE: _____
(Printed Title)
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. Partials 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 Columbia 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

Physical Science Laboratory

COLUMBIA SCIENTIFIC BALLOON FACILITY

SOLICITATION PROVISIONS

FOR FORMAL

INVITATION FOR BID

APR-212-NI-F-IFB Boilerplate

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<u>If offered on GSA contract, insert information:</u>

GSA Contract No._____

Beginning Contract Date: _____

Expiration Contract Date:_____

PART I: THE SCHEDULE

A. SOLICITATION CONTRACT FORM (Continued)

B. SUPPLIES OR SERVICES AND PRICES

Item No	DESCRIPTION	Part No.	Quantity	Price (to be completed by Bidder)
1.	RMS-3400ATX Deep Rack Mount PC including (**a**) 18.9" (to support full length PCI card of 13.3") (**b**) 4U (**c**) Intel Core i7-960 (8M Cache, 3.2GHz, 4.8GT/s QPI) (**d**) ANUS P6T SE X58+ICH10R, 6x DDR3 (24GB), 3x PCIe x16, 1x PCIe x1, 2x PCI, 6x SATA2, Audio, Gigabit LAN, 14x USB2.0 (**e**) Kingston 8GB 1333MHz (4x 2GB) DDR3 Memory (**f**) 1TB 7.2K RPM Serial ATA 3Gbps 3.5-in 32MB Cache Hard Drive (**g**) Sony 24X DVD+/-RW Optical Drive (**h**) nVidia Geforce 9800GT 512MB PCI-E x16 Video Card DVI/VGA/HDMI (**i**) U.S. Robotics 2976 Internal 56K V.90 PCI Fax/Modem (**j**) Built-in ADI AD 1985 6-Ch audio (**k**) Built-in Gigabit Ethernet Controller (**l**) 7 Full-size Expansion slot, ATX M/B (**m**) 500 W PS/2 ATX PFC 110/220 VAC Power Supply (80 Plus Certified Power Supply) (**n**) Microsoft Windows 7 Professional 64 Bit (**o**) Mount DVD-RW to right side on the chassis along with HDD (**p**) No monitor **-OR- EQUIVALENT -** ***INCLUDE WITH BID PACKAGE DESCRIPTIVE LITERATURE FOR TECHNICAL REVIEW & APPROVAL***		6/EA	$

C. DESCRIPTION / SPECIFICATIONS –

Refer to "B" above for requirements.

D. PACKAGING AND MARKING

Unless otherwise stated, shipments shall be packaged in accordance with BEST COMMERCIAL PRACTICES.

E. INSPECTION AND ACCEPTANCE

See the attached GENERAL PROVISIONS

F. DELIVERIES OR PERFORMANCE

Refer to:

- Invitation For Bid (IFB) Solicitation form – bottom of page 2

G. CONTRACT ADMINISTRATION DATA

THIS SECTION IS INTENTIONALLY OMITTED.

H. SPECIAL CONTRACT REQUIREMENTS

None.

PART II – CONTRACT CLAUSES

I. CONTRACT CLAUSES

The GENERAL PROVISIONS attached hereto as Exhibit B are incorporated herein by reference.

The following solicitation clauses are incorporated into this solicitation by reference as if set forth in full text

☒ 52.214-1	Solicitation Definitions – Sealed Bidding (JUL 1987)
☒ 52.214-2	Type of Business Organization – Sealed Bidding (JUL 1987)
☒ 52.214-3	Amendments to Invitations for Bids (DEC 1989)
☒ 52.214-4	False Statements in Bids (APR 1984)
☒ 52.214-5	Submission of Bids (MAR 1997)

☒ 52.214-6	Explanation of Prospective Bidders (APR 1984)
☒ 52.214-7	Late Submissions, Modifications, and Withdrawals of Bids (MAY 1997)
☒ 52.214-9	Failure to Submit Bid (JUL 1995)
☒ 52.214-10	Contract Award – Sealed Bidding (JUL 1990)
☒ 52.214-12	Preparation of Bids (APR 1984)
☐ 52.214-14	Place of Performance – Sealed Bidding (APR 1985)
☒ 52.214-15	Period for Acceptance of Bids (APR 1984)
☒ 52.214-17	Affiliated Bidders (APR 1984)
☐ 52.214-20	Bid Samples (APR 1984)
☒ 52.214-21	Descriptive Literature (APR 1984)
☐ 52.214-22	Evaluation of Bids for Multiple Awards (MAR 1990)
☐ 52.214-23	Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (MAY 1997)
☐ 52.214-24	Multiple Technical Proposals (APR 1984)(Step One of Two-Step Acquisition)
☐ 52.214-25	Step Two of Two-Step Sealed Bidding (APR 1985)
☐ 52.214-26	Audit and Records (OCT 1997)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

J. ELECTRONIC CONTRACTING

List of documents, exhibits, and other attachments:

(1) Invitation For Bid form *APR-203-NI-F Rev A*– **complete and return.**
(2) Invitation For Bid (IFB) form – **complete and return**.
(3) Solicitation Provisions for Formal Invitation For Bid form APR-212-NI-F-IFB Boilerplate – **complete and return**.

(4) Descriptive Literature – ***if not included in bid package, your bid may be considered non-responsive.***

(5) Section I – General Provisions and FAR Flowdown Provisions for Domestic Subcontracts/Purchase Orders for Commercial Items under a U.S. Government Prime Contract.

(6) Section K – Representations, Certifications and Other Statements of Bidders – **complete and return.**

PART IV – REPRESENTATIONS AND INSTRUCTIONS

K. REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS

Complete the attachment Section K and return with your sealed bid.
If not returned, your sealed bid may be considered non-responsive.

L. INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS

- ***No electronic of facsimiles accepted on sealed bids.***
- The Columbia 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 CSBF is considered a remote delivery location.
    - Normal delivery schedule for Federal Express Priority – approximately 4:00pm – 4:30pm Central Daylight Time.
    - Normal delivery schedule for UPS – approximately 10:00am – 12:30pm Central Daylight Time.
- United States Postal Service (USPS)
    - Normal delivery schedule for USPS – the CSBF receives and distributes mail each morning at 8:00am CDT, Monday-Friday, excluding Federal Holiday.
- Allow enough time to have your sealed bid delivered by the response due of ***09 June 2010 no later than 4:00pm Central DaylightTime.***
- Bids will be evaluated without discussions (see 52.214-10 under Section M below)

M. EVALUATION FACTORS FOR AWARD

1. 52.214-10 Contract Award—Sealed Bidding.

As prescribed in 14.201-6(e), insert the following provision:

CONTRACT AWARD—SEALED BIDDING (JULY 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may—

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

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Purchasing Department
purchasing@csbf.nasa.gov

GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR DOMESTIC SUBCONTRACTS / PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

CSBF APR-303-NI-F Rev D

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SECTION I: GENERAL PROVISIONS

A. ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS

1. This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with Exhibits, Attachments, and any Task Order(s) issued hereunder, and constitutes the entire agreement between the parties.

2. SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.

3. Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by NEW MEXICO STATE UNIVERSITY and have no effect unless expressly accepted in writing by NEW MEXICO STATE UNIVERSITY.

B. APPLICABLE LAWS

1. This Contract shall be governed by and construed in accordance with the laws of the State of New Mexico, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in this text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in this text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government. Any legal action to enforce, interpret, or negate any term or condition of this contract shall be brought in a court of competent jurisdiction in the State of New Mexico.

2. SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with of all applicable guidelines and directives of any local, state, and/or federal governmental authority.

3. If: (i) NEW MEXICO STATE UNIVERSITY's contract price or fee is reduced; (ii) NEW MEXICO STATE UNIVERSITY's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on NEW MEXICO STATE UNIVERSITY; or (iv) NEW MEXICO STATE UNIVERSITY incurs any other costs or damages; as a result of any violation of applicable laws,

orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, NEW MEXICO STATE UNIVERSITY may proceed as provided for in (3) below.

4. Upon the occurrence of any of the circumstances identified in (2) above, NEW MEXICO STATE UNIVERSITY may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SELLER, or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

5. In the event it is determined that the Work is not a Commercial Item as defined at FAR 2.101, then SELLER agrees that, General Provisions and FAR Flowdown Provisions for Subcontracts/Purchase Orders (All Agencies) for Non-Commercial Items under a U.S. Governmental Prime Contract, and the corresponding agency flowdowns shall be applicable to this Contract, in lieu of these terms and conditions, effective as of the date of this Contract.

6. SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to NEW MEXICO STATE UNIVERSITY hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 USC. Sec. 2601 et seq.) as amended.

7. SELLER shall provide to NEW MEXICO STATE UNIVERSITY with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its State approved counterpart.

C. ASSIGNMENT

Any assignment of SELLER'S Contract rights or delegation of SELLER'S duties shall be void, unless prior written consent is given by NEW MEXICO STATE UNIVERSITY. SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if NEW MEXICO STATE UNIVERSITY is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of NEW MEXICO STATE UNIVERSITY against SELLER. NEW MEXICO STATE UNIVERSITY shall have the right to make settlements and/or adjustments in price without notice to any assignee.

D. CHANGES

The NEW MEXICO STATE UNIVERSITY Purchasing Agent or Buyer may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

1. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, NEW MEXICO STATE UNIVERSITY shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

2. SELLER must assert its right to an equitable adjustment under this paragraph within thirty (30) days from the date of receipt of the written change order. If the SELLER's proposal includes the cost of property made obsolete or excess by the change, NEW MEXICO STATE UNIVERSITY shall have the right to prescribe the manner of disposition of the property.

3. Failure to agree to any adjustment shall be resolved in accordance with the Disputes clause of this Contract. However, nothing contained in this Changes' clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

E. COMMUNICATION WITH NEW MEXICO STATE UNIVERSITY's CUSTOMER

NEW MEXICO STATE UNIVERSITY shall be solely responsible for all liaison and coordination with the NEW MEXICO STATE UNIVERSITY's customer, including the U. S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

F. CONTRACT DIRECTION

1. Only the NEW MEXICO STATE UNIVERSITY's Purchasing Agent or assigned Buyer has authority to make changes in or amendments to this Contract. Changes and amendments must be in writing.

2. NEW MEXICO STATE UNIVERSITY engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the 'Changes" clause of this Contract and shall not be the basis for equitable adjustment.

3. Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the NEW MEXICO STATE UNIVERSITY's Purchasing Agent or assigned Buyer.

G. DEFAULT

1. NEW MEXICO STATE UNIVERSITY, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of their performance. SELLER shall have ten (10) days (or such longer period as NEW MEXICO STATE UNIVERSITY may authorize in writing) to cure any such failure after receipt of notice from NEW MEXICO STATE UNIVERSITY. Default involving delivery schedule delays shall not be subject to the cure provision.

2. SELLER shall be compensated only for Work actually delivered and accepted. NEW MEXICO STATE UNIVERSITY may require SELLER to deliver to NEW MEXICO STATE UNIVERSITY any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. NEW MEXICO STATE UNIVERSITY and SELLER shall agree on the amount of payment for these other deliverables.

3. SELLER shall continue all Work not terminated.

4. If after termination under paragraph (a), it is determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

H. DEFINITIONS

The following terms shall have the meanings set forth below:

1. "Contract" means the agreement or instrument of contracting, such as "P0", "Purchase Order" or "Task Order" or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed. It includes any "Letter Contract" which may have been superseded by this purchase order.

2. "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations (C. F. R.).

3. "NEW MEXICO STATE UNIVERSITY" is a public institution of higher education of the State of New Mexico, acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of NEW MEXICO STATE UNIVERSITY is identified on the face of this Contract, then "NEW MEXICO STATE UNIVERSITY" means that subsidiary or affiliate.

4. NEW MEXICO STATE UNIVERSITY's Purchasing Agent or assigned Buyer" means a person authorized by NEW MEXICO STATE UNIVERSITY's cognizant procurement organization to administer and/or execute this Contract.

5. "PO" or "Purchase Order" means this Contract.

6. SELLER" means the party identified on the face of this Contract with whom NEW MEXICO STATE UNIVERSITY is contracting.

7. "Task Order" means a separate order issued under this Contract.

8. "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

I. DISPUTES

All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by NEW MEXICO STATE UNIVERSITY.

J. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any Acknowledgement thereof, on the basis that this Contract or Acknowledgement contains an electronic signature.

K. EXPORT CONTROL

1. SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act 22 U.S.C.275 1-2794, including the International Traffic in Arms Regulation (ITAR), 22 CFR. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 CFR. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

2. SELLER agrees to notify' NEW MEXICO STATE UNIVERSITY if any deliverable under this Contract is restricted by export control laws or regulations.

3. SELLER shall immediately notify' the NEW MEXICO STATE UNIVERSITY Purchasing Agent or assigned Buyer if SELLER is, or becomes, listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

4. If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export-import compliance program in accordance with the ITAR.

5. (Where SELLER is a signatory under a NEW MEXICO STATE UNIVERSITY export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the NEW MEXICO STATE UNIVERSITY Purchasing Agent or assigned Buyer in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the SELLER's performance under this Contract.

6. SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any actor omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

L. VARIATION IN QUANTITY - EXTRAS

No variation in the quantity of any item called for by the Purchase Order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in the manufacturing process. Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

M. FURNISHED PROPERTY

1. NEW MEXICO STATE UNIVERSITY may provide to SELLER property owned by either NEW MEXICO STATE UNIVERSITY or its customer (Government Furnished Property). Furnished Property shall be used only for the performance of this Contract.

2. Title to Furnished Property shall remain in NEW MEXICO STATE UNIVERSITY or its customer. SELLER shall clearly

mark (if not so marked) all Furnished Property to show its ownership.

3. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify' NEW MEXICO STATE UNIVERSITY of any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

4. At NEW MEXICO STATE UNIVERSITY's request, and/or upon completion of this Contract, the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by NEW MEXICO STATE UNIVERSITY.

5. The Government Property clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government Furnished Property, or property to which the Government takes title under this Contract.

N. GRATUITIES / KICKBACKS

1. No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of NEW MEXICO STATE UNIVERSITY for the purpose of obtaining or rewarding favorable treatment as a supplier.

2. By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986(41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

O. INDEPENDENT CONTRACTOR RELATIONSHIP

1. SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to NEW MEXICO STATE UNIVERSITY.

2. SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

P. INFORMATION OF NEW MEXICO STATE UNIVERSITY

Information provided by NEW MEXICO STATE UNIVERSITY to SELLER remains the property of NEW MEXICO STATE UNIVERSITY. SELLER agrees to comply with the terms of any proprietary information agreement with NEW MEXICO STATE UNIVERSITY and to comply with all proprietary information markings and restrictive legends applied by NEW MEXICO STATE UNIVERSITY to anything provided hereunder to SELLER. SELLER agrees not to use any NEW MEXICO STATE UNIVERSITY provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of NEW MEXICO STATE UNIVERSITY.

Q. INFORMATION OF SELLER

SELLER shall not provide any Proprietary Information to NEW MEXICO STATE UNIVERSITY without prior execution of a proprietary information agreement by the parties.

R. INSPECTION AND ACCEPTANCE

1. NEW MEXICO STATE UNIVERSITY and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

2. No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. NEW MEXICO STATE UNIVERSITY's final inspection and acceptance shall be at destination.

3. If SELLER delivers non-conforming Work, NEW MEXICO STATE UNIVERSITY may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.

4. SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

S. INSURANCE / ENTRY ON NEW MEXICO STATE UNIVERSITY PROPERTY

1. In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of NEW MEXICO STATE UNIVERSITY or its customers for any reason in connection with this Contract then SELLER and its subcontractors shall procure and maintain for the performance of this Contract worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as NEW MEXICO STATE UNIVERSITY may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall provide NEW MEXICO STATE UNIVERSITY thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER's of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name NEW MEXICO STATE UNIVERSITY as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of NEW MEXICO STATE UNIVERSITY and is not contributory with any insurance, which NEW MEXICO STATE UNIVERSITY may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.

2. SELLER shall indemnify and hold harmless NEW MEXICO STATE UNIVERSITY, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors.

T. INTELLECTUAL PROPERTY

1. SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify, and hold harmless NEW MEXICO STATE UNIVERSITY and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

2. All data, copyrights, reports, and works of authorship developed in performance of this Contract shall be the sole property of NEW MEXICO STATE UNIVERSITY, shall be used by SELLER solely in work for NEW MEXICO STATE UNIVERSITY. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, SELLER hereby assigns to NEW MEXICO STATE UNIVERSITY the ownership of copyright in the deliverable items and NEW MEXICO STATE UNIVERSITY shall have the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be available in the deliverable items. SELLER agrees to give NEW MEXICO STATE UNIVERSITY or its designees all assistance reasonably required to perfect such rights. SELLER certifies the originality of all deliverable items and states that no portion is protected by any copyright or similar right vested in any third party.

U. NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

V. PACKING AND SHIPMENT

1. Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

2. A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the NEW MEXICO STATE UNIVERSITY Purchase Order number found on page one of this purchase order, the item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Purchase Order number.

3. Unless otherwise specified, delivery shall be FOB Destination.

W. PAYMENTS, TAXES, AND DUTIES

1. Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) NEW MEXICO STATE UNIVERSITY's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. NEW MEXICO STATE UNIVERSITY shall have a right of setoff against payments due or at issue under this Contract or any other contract between the parties.

2. Each payment made shall be subject to reduction to the extent of amounts which are found by NEW MEXICO STATE UNIVERSITY not to have been properly payable, and shall also be subject to reduction for overpayments.

3. Payment shall be deemed to have been made as of the date of mailing NEW MEXICO STATE UNIVERSITY's payment or electronic funds transfer.

4. Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any Government, all of which shall be listed separately on the invoice.

X. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order and/or Task Order, release document or schedule, (including)any continuation sheets), as applicable, including any special provisions; (ii) This form APR-303-NI-F and (iii) Statement of Work.

Y. PRIORITY RATING

This Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700). The Rating for this Contract is **DO-C9**.

Z. QUALITY CONTROL SYSTEM

1. SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

2. Records of all quality control inspection work by SELLER shall be kept complete and available to NEW MEXICO STATE UNIVERSITY and its customers.

AA. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of NEW MEXICO STATE UNIVERSITY.

BB. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining paragraphs and provisions of this Contract will remain in this force and effect.

CC. STOP WORK

1. SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from NEW MEXICO STATE UNIVERSITY, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

2. Within such period, NEW MEXICO STATE UNIVERSITY shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance

with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

DD. SURVIVABILITY

1. If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

Applicable Laws
Electronic Contracting
Export Control
Independent Contractor Relationship
Information of NEW MEXICO STATE UNIVERSITY
Insurance/Entry on NEW MEXICO STATE UNIVERSITY Property
Intellectual Property
Release of Information
Warranty

2. Those U. S. Government flowdown provisions that by their nature should survive.

EE. TERMINATION FOR CONVENIENCE

1. For specially performed Work:

a) NEW MEXICO STATE UNIVERSITY may terminate part or all of this Contract for its convenience by giving written notice to SELLER.

b) Upon termination, in accordance with NEW MEXICO STATE UNIVERSITY written direction, SELLER will immediately: (i) Cease work; (ii) Prepare and submit to NEW MEXICO STATE UNIVERSITY an itemization of all completed and partially completed deliverables and services; (iii) Deliver to NEW MEXICO STATE UNIVERSITY deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant Statement of Work; and (iv) Deliver upon request any Work in process. In the event NEW MEXICO STATE UNIVERSITY terminates for its convenience after performance has commenced, NEW MEXICO STATE UNIVERSITY will compensate SELLER for the actual, allowable, and reasonable expenses incurred by SELLER for Work in process up to and including the date of termination provided SELLER uses reasonable efforts to mitigate NEW MEXICO STATE UNIVERSITY's liability under this clause.

c) In no event shall NEW MEXICO STATE UNIVERSITY be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

2. For other than specially performed Work: NEW MEXICO STATE UNIVERSITY may terminate part or all of this Contract for its convenience by giving written notice to SELLER and NEW MEXICO STATE UNIVERSITY's only obligation to SELLER shall be payment of a mutually agreed-upon restocking or service charge.

3. In either case, SELLER shall continue all Work not terminated.

FF. TIMELY PERFORMANCE

1. SELLER's timely performance is a critical element of this Contract.

2. Unless advance shipment has been authorized in writing by NEW MEXICO STATE UNIVERSITY, NEW MEXICO STATE UNIVERSITY may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

3. If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify' NEW MEXICO STATE UNIVERSITY, in writing, giving pertinent details. This notification shall not change any delivery schedule.

4. In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by NEW MEXICO STATE UNIVERSITY.

GG. WAIVERS, APPROVALS, AND REMEDIES

1. Failure by NEW MEXICO STATE UNIVERSITY to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of NEW MEXICO STATE UNIVERSITY thereafter to enforce each such provision.

2. NEW MEXICO STATE UNIVERSITY's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.

3. The rights and remedies of NEW MEXICO STATE UNIVERSITY in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

HH. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (I) year. If any non-conforming Work is identified within the warranty period, SELLER, at NEW MEXICO STATE UNIVERSITY's option, shall promptly repair, replace, or reperform the non-conforming Work. Transportation of replacement Work, return of non-conforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, NEW MEXICO STATE UNIVERSITY may elect to return, reperform, or repair, replace, or reprocure the Work at SELLER's expense. All warranties shall run to NEW

MEXICO STATE UNIVERSITY and its customers.

SECTION 11: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in this text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract.

B. GOVERNMENT SUBCONTRACT

1. This Contract is entered into by the parties in support of a U.S. Government contract.
2. As used in the FAR clauses referenced below and otherwise in this Contract:

   a) "Commercial Item" means a commercial item as defined in FAR 2.101.

   b) "Contract" means this Contract.

   c) "Contracting Officer" shall mean the U.S. Government Contracting Officer for NEW MEXICO STATE UNIVERSITY's government prime contract under which this Contract is entered.

   d) "Contractor" and "OFFEROR" means the SELLER, as defined in this ###, acting as the immediate (first tier) subcontractor to NEW MEXICO STATE UNIVERSITY.

   e) "Prime Contract" means the contract between NEW MEXICO STATE UNIVERSITY and the U.S. Government or between NEW MEXICO STATE UNIVERSITY and its higher-tier contractor who has a Contract with the U.S.. Government.

   f) "Subcontract" means any contract placed by the contractor or lower-tier subcontractors under this Contract.

NOTES

1. Substitute NEW MEXICO STATE UNIVERSITY for Government or "United States" throughout this clause.

2. Substitute NEW MEXICO STATE UNIVERSITY Purchasing Agent or assigned Buyer for Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.

3. Insert "and NEW MEXICO STATE UNIVERSITY' after "Government" throughout this clause.

4. Insert "or NEW MEXICO STATE UNIVERSITY" after "Government" throughout this clause.

5. Communication or notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through NEW MEXICO STATE UNIVERSITY's Purchasing Agent.

6. Insert "and NEW MEXICO STATE UNIVERSITY" after "Contracting Officer", throughout the clause.

7. Insert "or NEW MEXICO STATE UNIVERSITY PROCUREMENT REPRESENTATIVE" after "Contracting Office?', throughout the clause.

C. AMENDMENTS REOUIRED BY PRIME CONTRACT

Contractor agrees that upon the request of NEW MEXICO STATE UNIVERSITY it will negotiate in good faith with NEW MEXICO STATE UNIVERSITY relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as NEW MEXICO STATE UNIVERSITY may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of. or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

D. PRESERVATION OF THE GOVERNMENT'S RIGHTS

If NEW MEXICO STATE UNIVERSITY furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that NEW MEXICO STATE UNIVERSITY, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor's use of such Furnished Items in support of other U. S. Government prime contracts.

E. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

52.215-2 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)
52.215-2 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS

(OCT 1997) (Note 2 applies.)
52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
52.222-2 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
52.222-2 EQUAL OPPORTUNITY (APR 2002)
52.225-1 RESTRICTION ON CERTAIN FOREIGN PURCHASES (OCT 2003)
52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2003)
52.247-6 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (APR 2003)

2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds $10,000:

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds $25,000:

a) 52.222-3 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERNS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds $500,000:

(a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) (Applicable if the Contractor is not a small business. Note 2 is applicable to paragraph (c) only; the Contractors subcontracting plan is incorporated herein by reference.)

5. The following FAR clauses apply to this Contract as indicated:

52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
52.225-1 BUY AMERICAN ACT—SUPPLIES (JUN 2003) (Applicable if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)

(d) 52.225-5 TRADE AGREEMENTS (OCT 2003) (Applicable if the Work contains other than U.S. made, designated country, Caribbean or NAFTA country end products.)

(e) 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987) (Applicable only if existing computer software is to be delivered under this Contract.)

(f) 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (JUN 2003) (Applicable if Government property is furnished in the performance of this Contract. Note I applies except in the phrases Government property, "Government-furnished property, and in references to title to property. The second time "Government appears in paragraph (b) (ii) "Government" stays "Government". Note 2 applies. The following is added as paragraph(m): Contractor shall provide to NEW MEXICO STATE UNIVERSITY immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system.)

F. CERTIFICATIONS AND REPRESENTATIONS

This clause contains certifications and representations that are material representations of fact upon which NEW MEXICO STATE UNIVERSITY will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of NEW MEXICO STATE UNIVERSITY, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by NEW MEXICO STATE UNIVERSITY. Contractor shall immediately notify NEW MEXICO STATE UNIVERSITY of any change of status with regard to these certifications and representations.

1. FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

a) Contractor certifies that, to the best of its knowledge and belief, that Contractor and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

b) **Contractor shall provide immediate written notice to NEW MEXICO STATE UNIVERSITY if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances**.

2. FAR 52.222-22 Previous Contracts and Compliance Reports. Contractor represents that if Contractor has participated in a previous Contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26): (i) Contractor has filed all required compliance reports, and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

3. FAR 52.222-25 - Affirmative Action Compliance. Contractor represents: (i) that Contractor has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-I and 60-2), or (ii) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

Physical Science Laboratory
COLUMBIA SCIENTIFIC BALLOON FACILITY
Purchasing Department
purchasing@csbf.nasa.gov

REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF SELLERS

SECTION K

APR-202-NI-F Section K REV F

INSTRUCTIONS TO THE SELLER. Certain representations and certifications must be made by the offeror and must be filled in as appropriate. The signature of the offeror on the first 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).

Each of the 23 provisions in this section has an applicability statement immediately under the provision title.

- K1 through K7 are applicable to all solicitations and contracts.
- K8 and K9 are applicable to only contracts for personal services.
- K10 through K21 apply only based on the total value (price to the government) of the procurement.
- K22 and K23 apply only if there is an "X" in the check block labeled "Applicable to this Procurement" or otherwise applicable in accordance with the rule(s) stated in each provision.

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

BUSINESS NAME:_____

(Type or Print)

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. Seller's signature indicates that all information provided in response to this section is (1) true and correct to the best of the knowledge of the individual signing and (2) is complete and accurate to the best of the knowledge of the individual signing.

Seller understands and affirms that all certifications and representations herein contained are material representations of fact and have been relied upon by the Government in awarding this order.

Name and Address of Company Submitting Bid/Proposal or Quote (Street, City, State and ZIP Code)	*Area Code and Telephone Number and Email*
Signature of Person authorized to sign Bid/Proposal or Quote	*Date of Bid/ Proposal or Quote*
Signers Name and Title (Type or Print)	*PO No OR Bid/Proposal/Quote Reference*

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)

(K1) *PLACE OF PERFORMANCE*

Applies to ALL Purchase Orders

(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)

(K2) *52.247-53 FREIGHT CLASSIFICATION DESCRIPTION (APR 1984)*

Applies to ALL Purchase Orders

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.

FOR FREIGHT CLASSIFICATION PURPOSES, OFFEROR DESCRIBES THIS COMMODITY AS:

(END OF PROVISION)

(K3) *52.204-3 TAXPAYER IDENTIFICATION (JUN 1997)*

Applies to ALL Purchase Orders

(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: ☐ "I" - 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)

(K4) *52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)*

Applies to ALL Purchase Orders

(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)

(K5) *52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)*

Applies to ALL Purchase Orders

(a) The Contractor shall notify the contracting Officer or designee, in writing, 45 (forty-five)* 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 – Be submitted in writing; State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and 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 PROVISION)

(K6) *52.225-1 BUY AMERICAN CERTIFICATE (MAY 2002)*

Applies to ALL Purchase Orders

(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]

End Product	Country of Origin

(ATTACH ADDITIONAL PAGE(S) IF NECESSARY)

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(END OF PROVISION)

(K7) *52.222-18 CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2001)*

Applies to ALL Purchase Orders

(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

ATTACH ADDITIONAL SHEET IF NECESSARY

(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)

(K8) *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)

(K9) *52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)*

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

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

(ATTACH ADDITIONAL PAGE(S) IF NECESSARY)

(END OF PROVISION)

(K10) *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)

(K11) 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 subcontracts 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)

(K12) *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 the Equal Opportunity clause of this solicitation; (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)

(K13) *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)

(K14) 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)

(K15) *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 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)

(K16) *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)

(K17) *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)

(K18) *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)

(K19) *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)(l)(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)

(K20) *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

Line Item No.	Country of Origin

(List as necessary) / ATTACH SEPARATE PAGE IF 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:"

Line Item No.	End Item Description

(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:"

Line Item No.	End Item Description

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

(END OF PROVISION)

(K21) *REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)*

Applies if Procurement is over $550,000

(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)

(K22) *52.227-14 RIGHTS IN DATA—GENERAL AS MODIFIED BY 1852.227-14*

☐ **Applies to this procurement if this box is checked.**

(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 Item	Limited Rights Data

Attach additional sheet if necessary.

(END OF PROVISION)

(K23) *1852.227-70 NEW TECHNOLOGY (MAY 2002) [G.9]*

☐ **Applicable to this procurement**.

(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 protectable 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 protectable 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 protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable 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 PROVISION)

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