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PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.

- 1828.101 Bid guarantees.
- 1828.101-70 NASA solicitation provision.
- 1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.
- 1828.103-70 Subcontractors performing construction work under nonconstruction contracts.
- 1828.103-71 Solicitation requirements and contract clauses.

Subpart 1828.3—Insurance

- 1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
- 1828.311-1 Contract clause.
- 1828.311-2 Agency solicitation provisions and contract clauses.
- 1828.311-270 NASA solicitation provisions and contract clauses.
- 1828.370 Fixed-price contract clauses.
- 1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.
- 1828.372 Clause for minimum insurance coverage.

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Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed \$100,000 and a performance bond or a performance and payment bond is required (see FAR 28.102 and 28.103). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed \$3 million.

1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.

1828.103-70 Subcontractors performing construction work under nonconstruction contracts.

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction work is in excess of \$1000,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102-1(b)(1) when the subcontract construction work is greater than \$25,000 but not greater than \$100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102-2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

1828.103-71 Solicitation requirements and contract clauses.

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in FAR 28.102-3. When alternative payment protections are required, insert a clause substantially the same as FAR 52.228-13, Alternative Payment Protections, appropriately modified.

Subpart 1828.3—Insurance

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-1 Contract clause.

The contracting officer must insert the clause at FAR 52.228-7, Insurance—

Liability to Third Persons, as prescribed in FAR 28.311-1, unless—

(a) Waived by the procurement officer; or

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

[65 FR 54440, Sept. 8, 2000]

1828.311-2 Agency solicitation provisions and contract clauses.

1828.311-270 NASA solicitation provisions and contract clauses.

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

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

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at 1852.228-81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

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

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1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section,

unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term “Contractor’s premises” shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor’s premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities, NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for