1827.303 Solicitation provisions and contract clauses.

(a)

(1) The contracting officer shall insert the provision at 1852.227-84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization.

(b)

(1) When the clause at FAR 52.227-11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227-11.

(i) To qualify for the clause at FAR 52.227-11, a prospective contractor shall be required to represent itself as either a small business firm or a nonprofit organization. If the contracting officer has reason to question the size or nonprofit status of the prospective contractor, the contracting officer will follow the procedures at FAR 27.304-1(a).

(iii) The contracting officer shall complete paragraph (j) of the clause at FAR 52.227-11 with the following: Communications and information submissions required by this clause will be made to the individuals identified in the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative.

(iv) See also paragraph (d)(3) of this section.

(6) Alternate IV to 52.227-11 is not used in NASA contracts. See instead 1827.303(b)(1).

(7) The contracting officer shall consult with the center patent or intellectual property counsel regarding the use of Alternate V in contracts for the performance of services at a NASA installation when a contractor is directed to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a. Alternate V may be included in, or added to, the contract when it is contemplated that a Contractor will be directed to fulfill NASA's obligations under a CRADA, but should be added prior to the contractor performing work under the CRADA.

(d)

(1) The contracting officer shall insert the clause at 1852.227-70, New Technology—Other than a Small Business Firm or Nonprofit Organization, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (*i.e.,* those subject to section 21035(b) of the Act), if the contract is to be performed in the United States, and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not all inclusive):

(i) Conduct of basic or applied research.

(ii) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(iii) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(iv) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(v) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(vi) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in paragraphs (i) through (v) of this section.

(2) The contracting officer shall insert the provision at 1852.227-71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology—Other than a Small Business Firm or Nonprofit Organization (see paragraph (d)(1) of this section).

(3) The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227-11, Patent Rights—Ownership by the Contractor, or 1852.227-70, New Technology—Other than a Small Business Firm or Nonprofit Organization (see paragraph (d)(1) of this section). It may also be inserted, upon consultation with the center patent or intellectual property counsel, in solicitations and contracts using another patent rights clause. The center New Technology and Patent Representatives are identified at *http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html*.

(e)

(1) When work is to be performed outside the United States by contractors that are not domestic firms, the clause at 1852.227-85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the center patent or intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227-13, Patent Rights—Ownership by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304-3 regarding subcontracts with U.S. firms.)

(2) When one of the conditions in FAR 27.303(e)(1)

(i) through (iv) is met, the contracting officer shall consult with the center patent or intellectual property counsel to determine the appropriate clause.

Parent topic: Subpart 1827.3—Patent Rights Under Government Contracts