



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Class Deviation

PCD 25-40

December 19, 2025

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## CLASS DEVIATION FROM FEDERAL ACQUISITION REGULATION (FAR) PART 37 AND NASA FAR SUPPLEMENT (NFS) PART 1837 TO IMPLEMENT THE REVOLUTIONARY FAR OVERHAUL (RFO) (NASA Case 2025-N017)

**PURPOSE:** To provide a Class Deviation from the FAR to implement the FAR Council's (the Council) model deviation text to FAR Part 37, Service Contracting, and deviation to NFS Part 1837, Service Contracting.

**BACKGROUND:** On April 15, 2025, the Executive Order (E.O.) 14275, "[Restoring Common Sense to Federal Procurement](#)" was signed. Section 2 of the E.O. establishes the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed." To implement E.O. 14275, the Office of Federal Procurement Policy (OFPP) is leading the **Revolutionary FAR Overhaul (RFO)** initiative. This effort is supported by the FAR Council member agencies— General Services Administration, Department of Defense, NASA, along with other agencies. In line with the E.O., the initiative aims to eliminate unnecessary regulations and policies across all levels of the federal government.

The Office of Management and Budget (OMB) memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, provided additional guidance to federal agencies regarding the FAR Overhaul.

**FAR Streamlining.** As part of the RFO, the FAR will be streamlined to include only statutory requirements, while non-statutory content will move to new buying guides, collectively forming the Strategic Acquisition Guidance (SAG). The Council will first issue model deviation guidance by FAR Part, followed by formal rulemaking through the notice-and-comment process. Agencies will have 30 days to issue class deviations based on the model text once it is released.

**Streamlining Agency Acquisition Supplements.** Agencies must streamline their FAR supplements by removing regulations not based on statute or executive orders and aligning with the FAR Council's deviation guidance. Supporting policies must also be updated to reflect these changes. This approach ensures the NFS remains consistent with the streamlined FAR.

**FAR Buying Guides and NFS Companion Guide (CG) (coming soon).** As the FAR and the NFS are streamlined, helpful non-regulatory content will be moved to new FAR Buying Guides and NFS CG. These guides are intended to offer practical instructions and best practices for implementing effective contracting methods.

RFO Part 37 model deviation has been released by the FAR Council. RFO Part 37 is primarily based in statute or procedures that are considered essential for sound procurement. RFO Part 37 retained statutory requirements to include, but not limited to, the following: Employment Authorities (5 U.S.C. § 3101 et seq); Severable Services Contracts for Periods Crossing Fiscal Years (10 U.S.C. § 3133 and 41 U.S.C. § 3902); Contracts for Professional and Technical Services (10 U.S.C. § 4507); Wage Rate Requirements (40 U.S.C. §§ 3141 et seq); Service Contract Labor Standards (41 U.S.C. §§ 6701 et seq); and Advisory and Assistance Services (41 U.S.C. § 4105). Burdensome, duplicative, or outdated language and language not required by statute have been removed from FAR Part 37. This plain language version of FAR Part 37 shall be adhered to.

To align with the RFO FAR Part 37, the NFS Part 1837 is revised to remove non-statutory and outdated language. This deviation implements the revised RFO Part 37 and NFS Part 1837.

***GUIDANCE:***

(1) Contracting officers (CO) shall follow the RFO Part 37 deviated text instead of FAR Part 37 as codified at 48 CFR Chapter 18 Subchapter F Part 1837. The FAR Council's RFO text is available at [FAR Overhaul - Part 37 | Acquisition.GOV](#).

(2) COs shall also follow the NFS Part 1837 deviated text enclosed within this deviation.

***ACTION REQUIRED BY CONTRACTING OFFICERS:*** Effective immediately, ensure that new contract actions issued on or after the effective date complies with the policy in the PCD.

***EFFECTIVE DATE:*** This PCD is effective as dated and shall remain in effect until implemented in the FAR and NFS or otherwise rescinded.

***PROVISION AND CLAUSE CHANGES:***

1852.237-72, Access to Sensitive Information

1852.237-73, Release of Sensitive Information

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**Enclosure**

Changes in the NFS Deviation text below are identified as follows:  
Deletions shown as ~~strike throughs~~; and additions shown as **[bold in brackets]**.

**PART 1837**  
**SERVICE CONTRACTING**  
*(Revised February 4, 2016)*

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## PART 1837 SERVICE CONTRACTING

### ~~Subpart 1837.1—Service Contracts—General~~

#### ~~1837.101 Definitions.~~

~~“Pension portability” means the recognition and continuation in a successor service contract of the predecessor service contract employees’ pension rights and benefits.~~

### [Subpart 1837.2—Personal Services]

#### ~~1837.104[201-1 Policy.]Personal services contracts.~~

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

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

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

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

#### ~~1837.109-70 Protective services contracts.~~

~~See Appendix A, A-102.3 for policy related to the acquisition of protective services.~~

~~[PN 18-09, PN 19-12]~~

## **~~1837.110 Solicitation provisions and contract clauses.~~**

### **~~1837.110-70 NASA solicitation provision and contract clauses.~~**

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

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

### **~~1837.170 Pension portability.~~**

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

~~—(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or~~

~~—(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and~~

~~—(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.~~

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

## **~~Subpart 1837.2 Advisory and Assistance Services~~**

### **~~1837.203 Policy.~~**

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

### **~~1837.203-70 Providing contractors access to sensitive information.~~**

~~—(a)(1) As used in this subpart, “sensitive information” refers to information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects: (1) to impair the Government’s~~

ability to obtain this type of information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

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

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

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

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

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

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

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

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

### **~~1837.203-71 Release of contractors’ sensitive information.~~**

Pursuant to the clause at 1852.237-73, Release of Sensitive Information, offerors and contractors agree that NASA may release their sensitive information when requested by service providers in accordance with the procedures prescribed in 1837.203-70 and subject to the safeguards and

~~protections delineated in the clause at 1852.237-72, Access to Sensitive Information. As required by the clause at 1852.237-73, or other contract clause or solicitation provision, contractors must identify information they claim to be “sensitive” submitted as part of a proposal or in the course of performing a contract. The contracting officer shall evaluate all contractor claims of sensitivity in deciding how NASA should respond to requests from service providers for access to information.~~

#### **~~1837.203-72 NASA contract clauses.~~**

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

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

#### **~~1837.204 Guidelines for determining availability of personnel.~~**

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

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

~~—(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).~~

~~—(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.~~

~~—(e) The Senior Procurement Executive is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).~~

### **~~Subpart 1837.6—Performance Based Acquisition~~**

#### **~~1837.601 General.~~**

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

#### **~~1837.604 Quality assurance surveillance plans.~~**

~~A Quality Assurance Surveillance Plan (QASP) must be developed for each contract for services, and also for supplies where higher level contract quality requirements are required. Those plans must be consistent with and may be included within the over-arching project QASP (PQASP)~~

described in NPR 8735.2, Management of Government Quality Assurance Functions for NASA Contracts.

### **[Subpart 1837.8—Other Service Considerations**

#### **1837.801-70 NASA Definitions.**

**As used in this subpart-**

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

***Sensitive information*** means information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects:

(1) to impair the Government's ability to obtain this type of information in the future; or

(2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

***Service provider*** means the service contractor that receives sensitive information from NASA to provide services to the requiring organization.

#### **1837.802 Presolicitation.**

##### **1837.802-70 Release of contractors' sensitive information.**

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

##### **1837.802-71 NASA contract clauses.**

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



**(b) Insert the clause at 1852.237-71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination that the requirement is in the best interest of the Government.**

**(c) Insert the clause at 1852.237-72, Access to Sensitive Information, in all solicitations and contracts for services that may require access to sensitive information belonging to other companies or generated by the Government.**

**(d) Insert the clause at 1852.237-73, Release of Sensitive Information, in all solicitations, contracts, and basic ordering agreements.]**

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**PART 1852**  
**SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**Subpart 1852.2—Text of Provisions and Clauses**

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**1852.237-70 Emergency Evacuation Procedures.**

As prescribed at ~~1837.110-70(a)~~ **1837.802-71(a)**, insert the following clause:

EMERGENCY EVACUATION PROCEDURES  
~~(DEC 1988)~~ **[(DEVIATION DEC 2025)]**

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. -If requested by the ~~E[c]~~ontracting ~~O[o]~~fficer, the ~~E[c]~~ontractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

**1852.237-71 Pension Portability.**

As prescribed at ~~1837.110-70(b)~~ **1837.802-71(b)**, insert the following clause:

PENSION PORTABILITY  
~~(JAN 1997)~~ **[(DEVIATION DEC 2025)]**

(a) ~~In order f[F]~~or pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

- (1) Comply with all applicable Government laws and regulations;
- (2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;
- (3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and
- (4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA ~~E[c]~~ontracting ~~O[o]~~fficer.

(b) The ~~E[c]~~ontractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

- (1) The prime contract requires pension portability;
- (2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed \$2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and
- (3) Either of the following conditions exists:
  - (i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

**1852.237-72 Access to Sensitive Information.**

As prescribed in ~~1837.203-72(a)~~ **[1837.802-71(c)]**, insert the following clause:

**ACCESS TO SENSITIVE INFORMATION  
(JUN 2005) [(DEVIATION DEC 2025)]**

(a) As used in this clause, “*sensitive information*” refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged], **the disclosure of which is likely to have either of the following effects:**

**(1) to impair the Government’s ability to obtain this type of information in the future;**  
**or**

**(2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret].**

(b) To assist NASA in accomplishing management activities and administrative functions, the ~~Contractor~~ shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the ~~Contractor~~ agrees to —

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the ~~Contractor’s~~ organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the E[c]ontracting O[fficer], and implement any necessary corrective actions.

(d) The E[c]ontractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the E[c]ontractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the E[c]ontractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the E[c]ontractor for serious misconduct affecting present responsibility as a government contractor.

(f) The E[c]ontractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information.

(End of clause)

#### **1852.237-73 Release of Sensitive Information.**

As prescribed in ~~1837.203-72(b)~~ **1837.802-71(d)**, insert the following clause:

#### **RELEASE OF SENSITIVE INFORMATION (JUN 2005) [(DEVIATION DEC 2025)]**

(a) As used in this clause, "sensitive information" refers to information, not currently in the public domain, that the E[c]ontractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged, **the disclosure of which is likely to have either of the following effects:**

**(1) to impair the Government's ability to obtain this type of information in the future;**  
**or**

**(2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret].**

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. -To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the E[c]ontractor under this contract. -By submitting this proposal or performing this contract, the E[c]ontractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the

course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, Access to Sensitive Information.

(c)(1) The E[c]ontractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. -For purposes of identifying sensitive information, the E[c]ontractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237-72, Access to Sensitive Information. -Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. -This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the E[c]ontractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The E[c]ontracting O[fficer] shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, Access to Sensitive Information. -However, unless the E[c]ontracting O[fficer] decides, with the advice of Center counsel, that reasonable grounds exist to challenge the E[c]ontractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. -This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the C[c]ontracting O[fficer], and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at ~~1852.204-76~~**[1852.240-76]**, Security Requirements for Unclassified Information Technology Resources. -The Security Requirements clause requires the service provider to implement an Information Technology **[System]** Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. -Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening ~~using the standard National Agency Check (NAC) forms~~ **[for the public trust position, as defined in 5 CFR 731,]** appropriate to the level of risk for adverse impact to NASA missions. ~~The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.~~

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The C[c]ontractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

CLEAN VERSION

**PART 1837**  
**SERVICE CONTRACTING**

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## **PART 1837 SERVICE CONTRACTING**

### **Subpart 1837.2—Personal Services**

#### **1837.201-1 Policy.**

Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA "to obtain services as authorized by Section 3109 of Title 5, United States Code." NASA's policy is to obtain the personal services of experts and consultants by appointment rather than by contract.

### **Subpart 1837.8—Other Service Considerations**

#### **1837.801-70 NASA Definitions.**

As used in this subpart-

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

*Sensitive information* means information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects:

(1) to impair the Government's ability to obtain this type of information in the future; or

(2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

*Service provider* means the service contractor that receives sensitive information from NASA to provide services to the requiring organization.

#### **1837.802 Presolicitation.**

#### **1837.802-70 Release of contractors' sensitive information.**

Pursuant to the clause at 1852.237-73, Release of Sensitive Information, offerors and contractors agree that NASA may release their sensitive information when requested by service providers subject to the safeguards and protections delineated in the clause at 1852.237-72, Access to Sensitive Information. As required by the clause at 1852.237-73, or other contract clause or solicitation provision, contractors must identify information they claim to be "sensitive" submitted as part of a proposal or in the course of performing a contract. The contracting officer shall evaluate all



contractor claims of sensitivity in deciding how NASA should respond to requests from service providers for access to information.

**1837.802-71 NASA contract clauses.**

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

(b) Insert the clause at 1852.237-71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination that the requirement is in the best interest of the Government.

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

(d) Insert the clause at 1852.237-73, Release of Sensitive Information, in all solicitations, contracts, and basic ordering agreements.

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**PART 1852  
SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**Subpart 1852.2—Text of Provisions and Clauses**

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**1852.237-70 Emergency Evacuation Procedures.**

As prescribed at 1837.802-71(a), insert the following clause:

**EMERGENCY EVACUATION PROCEDURES  
(DEVIATION DEC 2025)**

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the contracting officer, the contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

**1852.237-71 Pension Portability.**

As prescribed at 1837.802-71(b), insert the following clause:

**PENSION PORTABILITY  
(DEVIATION DEC 2025)**

(a) For pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

- (1) Comply with all applicable Government laws and regulations;
- (2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;
- (3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and
- (4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA contracting officer.

(b) The contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

- (1) The prime contract requires pension portability;
- (2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed \$2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and
- (3) Either of the following conditions exists:
  - (i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or
  - (ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

#### **1852.237-72 Access to Sensitive Information.**

As prescribed in 1837.802-71(c), insert the following clause:

##### **ACCESS TO SENSITIVE INFORMATION (DEVIATION DEC 2025)**

(a) As used in this clause, "*sensitive information*" refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged, the disclosure of which is likely to have either of the following effects:

- (1) to impair the Government's ability to obtain this type of information in the future; or
- (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

(b) To assist NASA in accomplishing management activities and administrative functions, the contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the contractor agrees to —

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the contracting officer, and implement any necessary corrective actions.

(d) The contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the contractor for serious misconduct affecting present responsibility as a government contractor.

(f) The contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information.

(End of clause)

**1852.237-73 Release of Sensitive Information.**

As prescribed in 1837.802-71(d), insert the following clause:

**RELEASE OF SENSITIVE INFORMATION  
(DEVIATION DEC 2025)**

(a) As used in this clause, "sensitive information" refers to information, not currently in the public domain, that the contractor has developed at private expense, that may embody trade secrets

or commercial or financial information, and that may be sensitive or privileged, the disclosure of which is likely to have either of the following effects:

(1) to impair the Government's ability to obtain this type of information in the future; or

(2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the contractor under this contract. By submitting this proposal or performing this contract, the contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, Access to Sensitive Information.

(c)(1) The contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract shall contain the clause at NFS 1852.237-72, Access to Sensitive Information. -Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. -This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The contracting officer shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, Access to Sensitive Information. However, unless the contracting officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the contracting officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.240-76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information System Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening for the public trust position, as defined in 5 CFR 731, appropriate to the level of risk for adverse impact to NASA missions.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)