

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 confidential or privileged.

(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, "receiving entity" refers to the service-providing contractor that receives confidential information from NASA to provide services to the requiring organization.

(b) To support management activities and administrative functions, NASA relies on the services of numerous contractors. Contractors providing these services may require access to confidential information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure. NASA shall require any service contractor that receives access to confidential information to take the steps contained in the clause at 1852.237-72, Access to Confidential Information, to protect it from unauthorized use or disclosure.

(c) The requiring organization is responsible for identifying when a requirement will require access to confidential information and making the determination that providing access is necessary for accomplishing the Agency's mission. The requiring organization is responsible for reviewing any contractor requests for access to information to determine whether the access is necessary and whether the information requested is considered confidential as defined in paragraph (a) of this section.

(d)(1) Solicitations for services that require contractor access to confidential information shall require each offeror (potential receiving entity) 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, the new service contractor must submit for approval a comprehensive organizational conflict of interest avoidance plan, based on the preliminary analysis. This plan should thoroughly analyze all organizational conflicts of interest that might arise because the service contractor has access to other companies' confidential information. This analysis should propose specific methods to control, mitigate, or eliminate all problems identified. The contracting officer shall incorporate the approved plan into the resulting contract, as a compliance document.

(2) If the contractor will be operating an information technology system for NASA that contains confidential 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.

1837.203-71 Release of contractors' confidential information.

(a) By submitting offers or performing contracts, offerors and contractors agree that NASA may provide non-NASA employees access to their confidential information, subject to the safeguards and protections delineated in the clause at 1852.237-72, Access to Confidential Information.

(b) As required by the clause at 1852.237-73, Release of Confidential Information, or another contract clause or solicitation provision, contractors must identify confidential information submitted as part of a proposal or in performance of a contract. The contracting officer shall evaluate the contractor's claim to have submitted "confidential information" in deciding whether NASA and its service contractors must expend time and resources to protect and safeguard the information in accordance with the clause at 1852.237-72.

1837.203-72 NASA contract clauses.

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

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

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add sections 1852.237-72 and 1852.237-73 to read as follows:

1852.237-72 Access to Confidential Information.

As prescribed in 1837.203-72(a), insert the following clause:

ACCESS TO CONFIDENTIAL INFORMATION (XX/XX)

(a) As used in this clause, "confidential 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 may embody trade secrets or commercial or financial information, and may be confidential or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract. Performing these services may require access to confidential information that other companies have furnished to the Government in the course of providing supplies or services, or that the Government has generated.

(c) In performing this contract, the Contractor agrees to—

(1) Utilize any confidential information coming into its possession only for the purposes of performing the services specified in this contract, and never to improve its own competitive position in another procurement.

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

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

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

(5) Train employees who may require access to confidential 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 an express, binding written agreement from each employee who receives access to confidential information to protect it from unauthorized use or disclosure and to utilize it only for the purposes of performing this contract.

(7) Establish 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 Conflict of Interest Avoidance Plan, which the Contracting Officer has approved and incorporated into this contract.

(e) The nature of the work on this contract may subject the Contractor and its employees 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.

(f) The Contractor shall include the substance of this clause, including this