

and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (i.e., depending on the technology, two to five years after production of the data) may be established after which the data first produced by the recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas must be covered.

(4) For data, including software, first produced by the recipient under the agreement, the recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports: Non-Proprietary Research Results." Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) Section 1274.905(b)(3) requires the recipient to provide NASA a government purpose license for data first produced by the Recipient that constitutes trade secrets or confidential business or financial information. NASA and the recipient shall determine the scope of this license at the time of award of the cooperative agreement. In addition to the purposes given

as examples in §1274.905(b)(3), the license should provide NASA the right to use this data under a separate cooperative agreement or contract issued to a party other than the recipient for the purpose of continuing the project in the event the cooperative agreement is terminated by either party.

(7) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.209 Evaluation and selection.

(a) *Factor development.* The agreement officer, along with the NASA evaluation team has discretion to determine the relevant evaluation criteria based upon the project requirements, and the goals and objectives of the cooperative agreement.

(b) *Communications during non-competitive awards.* For cooperative agreements awarded non-competitively (see §1274.202(b)), there are no restrictions on communications between NASA and the recipient. In addition, there is no requirement for the development and publication of formal evaluation or source selection criteria.

(c) *Communications during competitive awards.* As discussed in §1274.203(c), when a competitive source selection process will be followed to select the recipient, an appropriate level of care shall be taken by NASA personnel in order to protect the integrity of the source selection process. Therefore, upon release of the formal cooperative

agreement notice (CAN), the agreement officer shall direct all procurement personnel associated with the source selection to refrain from communicating with prospective recipients and that all inquiries be referred to the agreement officer, or other authorized representative.

(d) *Selection factors and subfactors.* (1) At a minimum, the selection process for the competitive award of cooperative agreements to commercial entities shall include evaluation of potential recipients' proposals for merit and relevance to NASA's mission requirements through their responses to the publication of NASA evaluation factors. The evaluation factors should include technical and management capabilities (mission suitability), past performance, and proposed costs (including proposed cost share).

(2) For programs that may involve potentially hazardous operations related to flight, and/or mission critical ground systems, NASA's selection factors and subfactors shall provide for evaluation of the recipient's proposed approach to managing risk (e.g., technology being applied or developed, technical complexity, performance specifications and tolerances, delivery schedule, etc.).

(3) As part of the evaluation process, the factors, subfactors, or other criteria should be tailored to properly address the requirements of the cooperative agreement.

(e) *Other factors and subfactors.* Other factors and subfactors may include—

(1) The composition or appropriateness of the business relationship of proposed team members or consortium, articles of collaboration, participation of an appropriate mix of small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, and women-owned business concerns, as well as non-profits and educational institutions, including historically black colleges and universities and minority institutions).

(2) Other considerations may include enhancing U.S. competitiveness, developing a capability among U.S. firms, identification of potential markets, appropriateness of business risks.

(f) *Proposal evaluation.* The proposals shall be evaluated in accordance with the criteria published in the CAN. Proposals selected for award will be supported by documentation as described in 1274.211(b). When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(g) *Technical evaluation.* The technical evaluation of proposals may include peer reviews. Because the business sense of a cooperative agreement proposal is critical to its success, NASA may reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions.

(h) *Cost/price evaluation.* (1) Prior to award of a cooperative agreement, agreement officers shall ensure that proposed costs are accurate and reasonable. In order to do so, cost and pricing data may be required. The level of cost and pricing data to be requested shall be commensurate with the analysis necessary to reach agreement on overall proposed project costs. The evaluation of costs shall lead to the determination and verification of total project costs to be shared by NASA and the recipient, as well as establishment of NASA's milestone payment schedule based on its 50 percent cost share. The guidance at FAR 15.4 and NFS 1815.4 can assist in determining whether cost and pricing data are necessary and the level of analysis required. While competition may be present (i.e., more than one proposal is received), in most cases companies are proposing competing technologies and varying approaches that reflect very different methods (and accompanying costs) to satisfy NASA's project objectives. Consequently, this type of competitive environment is very different from an environment where competitive proposals are submitted in response to a request for proposals leading to award of a contract for relatively well-defined program or project requirements.

(2) During evaluation of the cost proposal, the agreement officer, along with other NASA evaluation team

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members and/or pricing support personnel, shall determine the reasonableness of the overall proposed project costs, including verifying the value of the recipient's proposed non-cash and in-kind contributions. Commitments should be obtained and verified to the extent practicable from the recipient or any associated team members, from which proposed contributions will be made.

(3) If the recipient's proposed contributions include application of IR&D costs, see § 1274.204(g).

(i) *Awards to foreign governments and firms.* (1) An award may not be made to a foreign government. However, if selected as the best available source, an award may be made to a foreign firm. If a proposal is selected from a foreign firm sponsored by their respective government agency, or from entities considered quasi-governmental, approval must be obtained from Headquarters, Program Operations Division (Code HS). Such requests must include detailed rationale for the selection, to include the funding source of the foreign participant. The approval of the Assistant Administrator for Procurement is required to exclude foreign firms from submitting proposals. Award to a foreign firm shall be on a no-exchange-of-funds basis (see NPD 1360.2).

(2) The Office of External Affairs (Code I), shall be notified prior to any announcement of intent to award to a foreign firm. Additionally, pursuant to section 126 of Pub. L. 106-391, as part of the evaluation of costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, NASA shall solicit comment on the potential impact of such participation, through notice published in the FedBizOpps or NAIS.

(j) *Safe-guarding proposals.* Competitive proposal information shall be protected in accordance with FAR 15.207, Handling proposals and information. Unsolicited proposals shall be protected in accordance with FAR 15.608, Prohibitions, and FAR 15.609, Limited use of data.

(1) Evaluation team members, the source selection authority, and agreement officers are responsible for pro-

tecting sensitive information on the award of a grant or cooperative agreement and for determining who is authorized to receive such information. Sensitive information includes: information contained in proposals; information prepared for NASA's evaluation of proposals; the rankings of proposals for an award; reports and evaluations of source selection panels, boards, or advisory councils; and other information deemed sensitive by the source selection authority or by the agreement officer.

(2) No sensitive information shall be disclosed to persons not on the evaluation team or evaluation panel, unless the Selecting Official or the agreement officer has approved disclosure based upon an unequivocal "need-to-know" and the individual receiving the information has signed a Non-Disclosure Certificate. All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster and a Disclosure Certificate. The attendance rosters and certificates shall be maintained in official files for a minimum of six months after award.

(3) The improper disclosure of sensitive information could result in criminal prosecution or an adverse action.

(k) *Controls on the use of outside evaluators.* The use of outside evaluators shall be approved in accordance with NFS 1815.207-70(b). A cover sheet with the following legend shall be affixed to data provided to outside evaluators:

GOVERNMENT NOTICE FOR HANDLING
PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with.

(1) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the

Installation Central Printing Management Officer (ICPMO) to ensure compliance with NPD 1490.1. The Agreement Officer will be advised in writing of the results of the ICPMO review.

§ 1274.210 Unsolicited proposals.

(a) For a proposal to be considered a valid unsolicited proposal, the submission must—

- (1) Be innovative and unique;
- (2) Be independently originated and developed by the recipient;
- (3) Be prepared without Government supervision, endorsement, direction or direct Government involvement;
- (4) Include sufficient technical and cost detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and
- (5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(b) For each unsolicited proposal selected for award, the cognizant technical office will prepare and furnish to the Agreement Officer, a justification for acceptance of an unsolicited proposal (JAUP). The JAUP shall be submitted for the approval of the agreement officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

- (1) Unique and innovative methods, approaches or concepts demonstrated by the proposal.
- (2) Overall scientific or technical merits of the proposal.
- (3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.
- (4) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.
- (5) Current, open solicitations under which the unsolicited proposal could be evaluated.

(c) Unsolicited proposals shall be handled in accordance with NFS 1815.606, "Agency Procedures".

(d) Unsolicited proposals from foreign sources are subject to NPD 1360.2, "Development of International Cooperation in Space and Aeronautics Programs".

(e) There is no requirement for a public announcement of the award of a cooperative agreement. In addition, there is no requirement for announcement of awards resulting from unsolicited proposals. However, in those instances where a public announcement is planned and the award is the result of an unsolicited proposal, in addition to the requirements of NFS 1805.303-71(a)(3), NASA personnel must take measures that ensure protection of the data and intellectual property rights of submitters of unsolicited proposals as provided by FAR 5.202(a)(8).

(f) Additional information regarding unsolicited proposals is available in the handbook entitled, "Guidance for the Preparation and Submission of Unsolicited Proposals", which is available on the NASA Acquisition Internet Service Website at: <http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html>.

§ 1274.211 Award procedures.

(a) In accordance with NFS 1805.303-71, the NASA Administrator shall be notified at least three (3) workdays before a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the agreement may be of significant interest to Headquarters.

(b) For awards that are the result of a competitive source selection, the technical officer will prepare and furnish to the agreement officer a signed selection statement based on the selection criteria stated in the solicitation.

(1) *Bilateral award.* All cooperative agreements shall be awarded on a bilateral basis.

(2) *Consortium awards.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(c) *Central Contractor Registration (CCR).* Prior to implementation of the Integrated Financial Management (IFM) System at each center, all grant and cooperative agreement recipients