

By the Commission.
Joseph C. Polking,
Secretary.
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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837 and 1852

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as promotion of compliance with current Federal-wide policies on Government property, revision of headings, and delegation of authority.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making

other changes in order to reduce and simplify the regulation. This rule is part of the effort to simplify NASA's regulations.

Summary of Changes

Section 1837.204 is added to delegate authority to make the determinations of non-availability of personnel under FAR 37.204 (FAC 90-33, Item II, 60 FR 49720 and 49723, 9-26-95). In addition, section 1815.413-2 is revised, in the context of FAR 37.203 and 37.204, to refer to the determinations to be made under the new section 1837.204.

To promote compliance with Federal-wide policy, a reference is added in 1815.970(b) to the policy under FAR 45.302-3(c) on excluding the cost of facilities when contracting officers calculate a profit or fee objective prior to contract negotiation.

The prescription is revised in 1815.7002 for the ombudsman clause in order to remove the reference to Section L of the solicitation. NASA will instruct contracting officers to place the clause in Section I which is more appropriate for information that may be useful before *and after* contract award.

Section 1816.505 is added (per FAC 90-33, Item III, 60 FR 49723, 9-26-95) on task and delivery order contracts in order to enable persons to identify the appropriate NASA ombudsman.

In order to conform to changes in the FAR made by FAC 90-32, Item V (60 FR 48206, 9-18-95) headings are changed in part 1819.

This rule increases from \$25,000 to the "simplified acquisition threshold" the dollar amount at which the Safety and Health clause of 1852.223-70 is automatically included in construction contracts and subcontracts. Regardless

of dollar amount, the clause is included when there are known hazards.

This rule removes paragraph (b) of 1835.003 which refers to a NASA Management Instruction entitled "Recoupment Policy for the Sale, Use, Lease, or Other Transfer of NASA-Developed Technologies." The NASA Management Instruction has been canceled because we know of no occasion where the policy has been used by NASA to recoup R&D or other nonrecurring costs.

Section 1852.227-15 is redesignated as 1852.227-17 because the section provides a paragraph to be added to the basic clause at FAR 52.227-17.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no burdens on the public under the Paperwork Reduction Act of 1995, as implemented under 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815-413-2 is revised to read as follows:

1815.413-2 Alternate II.

(a) *General.* This section prescribes the policy and procedures pertaining to the use of individuals from outside the Government as evaluators of proposals. The references in FAR 15.413-2 to the provision at FAR 52.215-12 shall be considered to be references to the provision at 48 CFR 1852.215-72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available. Qualified proposal evaluators will normally be available from within the Government. However, from time-to-time it may be necessary to make a determination of non-availability of qualified Government evaluators as required by 48 CFR 1837.204 and to disclose proposal information to non-Government evaluators.

(c) *Approval to release proposal outside the Government.* (1) Regarding proposals and proposal information resulting from Requests For Proposals, after the determination of non-availability is made (48 CFR 1837.204) and a copy of the determination is included in the procurement file, the Procurement Officer, with the concurrence of the Chief Counsel, may authorize the release of the proposals and proposal information to non-Government evaluators. Under FAR 37.203(d), the determination of non-availability of qualified personnel need not be made when the proposal information is released to a JPL employee for evaluation.

(2) Information from SBIR, STTR, NRA, AO and unsolicited proposals may be authorized for disclosure to non-Government evaluators by the NASA program official one level higher than the official responsible for the evaluation without making the determination of non-availability as required by 48 CFR 1837.204.

(d) *Appointing non-Government evaluators as special Government employees.* (1) Except for JPL employees, evaluators of proposal information resulting from an RFP shall be appointed as special Government employees.

(2) Appointment as a Special Government employee is a separate action from the approval required by paragraph (c) of this section and may be processed concurrently. Appointment as a special Government employee shall be made by:

(i) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(ii) The Field Installation personnel office when the release of proposal information is to be made by the Field Installation.

(3) Non-Government evaluators need not be appointed as special Government employees when they evaluate information from SBIR, STTR, NRA, AO, and unsolicited proposals.

(e) *Release of proposal information.* The written approvals required by paragraphs (c)(1) and (c)(2) of this section shall be provided to the contracting officer before the actual release of the proposal information. As a minimum, the approval shall:

(1) Identify the precise proposal information being released;

(2) Identify the person receiving the proposal information and include a statement that the person has been appointed a special Government employee or a statement of the applicable exception under paragraph (d)(3) of this section;

(3) Provide a justification of the need for disclosure of the proposal information to the non-Government evaluator(s); and

(4) Provide a statement that a signed "Agreement and Conditions for Evaluation of Proposals (August 1993)," in accordance with paragraph (f) of this section, will be obtained prior to the proposal to the evaluator.

(f) *Agreements.* For any proposal information, (i.e., RFP, SBIR, STTR, NRA, AO and unsolicited proposals) the NASA official who actually releases/transfers the proposal information to a non-Government evaluator, including employees of JPL, shall, prior to such disclosure, require each non-Government evaluator to sign the following "Agreement and Conditions for Evaluation of Proposals (April 1993)," and to complete and sign a "Procurement Integrity Certification for Procurement Officials" (Optional Form 333), in accordance with FAR 3.104-12. Agreement and Conditions for Evaluation of Proposals (August 1993)

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. This limitation does not apply to information that is otherwise available without restrictions to the Government, another competing contractor, or the public.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413-2(e) and NFS 1815.413(a)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information for evaluation.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. At any time the recipient becomes aware that he or she or a person with a close personal relationship (household family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

(6) I understand that the term "leave the Government" in the last sentence of the Procurement Integrity Certification for Procurement Officials, Optional Form 333, means "cease to function as a procurement official."

Signature: _____

Name typed or printed: _____

Date: _____

[End of Agreement]

(g) *Affixing of a protection notice.* The official who actually releases/transfers the proposal information shall review each proposal or the extracted item of proposal information that is to be released and ensure that the notice at FAR 15.413-2(e) (See 48 CFR 1815.413(a)) is affixed to each proposal or the extracted item of proposal information before it is released/transferred.

(h) *JPL*. If JPL personnel, in evaluating proposal information obtained from a standard RFP released to them by NASA, must obtain assistance from non-JPL, non-Government evaluators, JPL must obtain written approval from the Procurement Officer before releasing the information; except that information from SBIR, STTR, NRA, AO, and unsolicited proposals may be disclosed outside JPL with prior written approval, in compliance with paragraph (c)(2) of this section.

3. The last sentence of paragraph (b) of 1815.970 is revised to read as follows:

1815.970 NASA structured approach for profit or fee objective.

(a) * * *

(b) * * * Neither the cost of facilities (see FAR 45.302-3(c)) nor the amount calculated for the cost of money for facilities capital is to be included as part of the cost base in column 1.(a) in the computation of profit.

* * * * *

4. The last sentence of 1815.7002 is revised to read as follows:

1815.7002 Commerce Business Daily announcements, solicitations and contracts.

* * * Also, a clause substantially the same as the one at 48 CFR 1852.215-84 shall be included in solicitations, including draft solicitations, and in all contracts.

PART 1816—TYPES OF CONTRACTS

5. Section 1816.505 is added to read as follows:

1816.505 Ordering.

The ombudsman referred to in FAR 16.505(b)(4) is the ombudsman of the installation issuing the solicitation and its resultant contract. See 48 CFR part 1815, subparts 1815.70 and 1852.215-84.

6. The headings for part 1819, section 1819.505, and subpart 1819.7 are revised to read as follows:

PART 1819—SMALL BUSINESS PROGRAMS

1819.505 Rejecting Small Business Administration recommendations.

Subpart 1819.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

7. Section 1823.7004 is amended by republishing paragraph (c) introductory text and revising paragraphs (c)(2), (c)(3), and (c)(4) to read as follows:

1823.7004 Contract clause.

* * * * *

(c) Except as provided in paragraph (d) of this section, the clause at 48 CFR 1852.223-70 shall be included in—

(1) * * *

(2) All construction, repair, or alteration contracts in excess of the simplified acquisition threshold;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Any procurement regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature, or

(ii) During the life of the contract it can reasonably be expected that hazards will be generated within the operational environment and the contracting officer or safety and health representative determines that they warrant inclusion of the clause.

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PART 1827—PATENTS, DATA, AND COPYRIGHTS

8. Paragraph (c) of 1827.405 is revised to read as follows:

1827.405 Other data rights provisions.

* * * * *

(c) *Production of special works.* Paragraph (f) of the clause at 48 CFR 1852.227-17 is to be added to the clause at FAR 52.227-17, Rights in Data—Special Works, whenever that clause is used in any NASA contract.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

9. Section 1835.003 is revised to read as follows:

1835.003 Policy.

See NHB 5800.1, NASA Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

PART 1837—SERVICE CONTRACTING

10. Section 1837.204 is added to read as follows:

1837.204 Guidelines for determining availability of personnel.

(a) The NASA official one level above the NASA program official responsible for the evaluation shall make the determination of non-availability of personnel under FAR 37.204 (a) and (b). For field installations, the concurrence of the Office of Chief Counsel shall be obtained and for Headquarters actions, the concurrence of the Office of Associate General Counsel for Contracts shall be obtained. The contracting officer shall ensure that a copy of the determination is in the procurement file prior to issuance of a solicitation.

(b) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination required by FAR 37.204.

(c) The agreement required by FAR 37.204(c) shall be made by the program official responsible for the evaluation and the contracting officer.

(d) Class determinations under FAR 37.204(e) shall be made by the Associate Administrator for Procurement. The installation procurement office shall forward its request with an explanation of the necessity for the use of outside evaluators as outlined in FAR 37.204(b) to Code HS.

(e) See (NFS) 48 CFR 1815.413-2 Alternate II, for instructions concerning—

(1) The authority to release proposals resulting from RFP's outside the Government and

(2) The requisite nondisclosure statements.

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

11. Section 1852.223-70 is amended by revising the date of the clause to read “(February 1996)” and revising paragraph (e)(2) of the clause to read as follows:

1852.223-70 Safety and Health.

* * * * *

(e) * * *

(1) * * *

(2) require construction, repair, or alteration in excess of the simplified acquisition threshold, or

* * * * *

1852.227-15 [Redesignated as 1852.227-17]

12. Section 1852.227-15 is redesignated as 1852.227-17.

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