

■ 2. In Appendix A to Part 356, amend section I by revising the introductory text and paragraphs (a) and (b) to read as follows:

### Appendix A to Part 356—Bidder Categories

#### I. Categories of Eligible Bidders

We describe below various categories of bidders eligible to bid in Treasury auctions. You may use them to determine whether we consider you and other persons or entities to be one bidder or more than one bidder for auction bidding and compliance purposes. For example, we use these definitions to apply the competitive and noncompetitive award limitations and for other requirements. Notwithstanding these definitions, we consider any persons or entities that intentionally act together with respect to bidding in a Treasury auction to collectively be one bidder. Even if an auction participant does not fall under any of the categories listed below, it is our intent that no auction participant receives a larger auction award by acquiring securities through others than it could have received had it been considered one of these types of bidders.

(a) *Corporation*—We consider a corporation to be one bidder. A corporation includes all of its affiliates, which may be persons, partnerships, or other entities. We consider a business trust, such as a Massachusetts or Delaware business trust, to be a corporation. We use the term “corporate structure” to refer to the collection of affiliates that we consider collectively to be one bidder. An affiliate is any:

- Entity that is more than 50-percent owned, directly or indirectly, by the corporation;
- Entity that is more than 50-percent owned, directly or indirectly, by any other affiliate of the corporation;
- Person or entity that owns, directly or indirectly, more than 50 percent of the corporation;
- Person or entity that owns, directly or indirectly, more than 50 percent of any other affiliate of the corporation; or
- Entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation, or of any affiliate of the corporation.

An entity that is more than 50-percent owned as described in this definition is not an affiliate, however, if:

- The purpose of such ownership is to seek a return on investment and not to engage in the business of the entity;
- The owner does not routinely exercise operational or management control over the entity;
- The owner does not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- The corporation has written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent it from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and

- The corporation submits notice and certification to us, as provided in this appendix A.

A corporation that plans to make use of this exception to the definition of “affiliate” must inform us of this fact in writing and provide the following certification:

[Name of corporation] hereby certifies that, with regard to any entity of which it owns more than 50 percent as defined in appendix A to 31 CFR part 356, but for which the purpose of such ownership is to seek a return on investment and not to engage in the business of the entity:

- We do not routinely exercise operational or management control over the entity;
- We do not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- We have written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the corporation from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and
- We will continue to meet the terms of this certification until we notify the Treasury of a change.

(b) *Partnership*—We consider a partnership to be one bidder if it is a partnership for which the Internal Revenue Service has assigned a tax-identification number. A partnership includes all of its affiliates, which may be persons, corporations, general partners acting on behalf of the partnership, or other entities. We use the term “partnership structure” to refer to the collection of affiliates that we consider collectively to be one bidder. We may consider a partnership structure that contains one or more corporations as a “partnership” or a “corporation,” but not both.

An affiliate is any:

- Entity that is more than 50-percent owned, directly or indirectly, by the partnership;
- Entity that is more than 50-percent owned, directly or indirectly, by any other affiliate of the partnership;
- Person or entity that owns, directly or indirectly, more than 50 percent of the partnership;
- Person or entity that owns, directly or indirectly, more than 50 percent of any other affiliate of the partnership; or
- Entity, a majority of whose general partners or a majority of whose board of directors are general partners or directors of the partnership or of any affiliate of the partnership.

An entity that is more than 50-percent owned as described in this definition is not an affiliate, however, if:

- The purpose of such ownership is to seek a return on investment and not to engage in the business of the entity;
- The owner does not routinely exercise operational or management control over the entity;
- The owner does not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- The partnership has written policies or procedures, including ongoing compliance monitoring processes, that are designed to

prevent it from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and

- The partnership submits notice and certification to us, as provided in this appendix A.

A partnership that plans to make use of this exception to the definition of “affiliate” must inform us of this fact in writing and provide the following certification:

[Name of partnership] hereby certifies that, with regard to any entity of which it owns more than 50 percent as defined in appendix A to 31 CFR part 356, but for which the purpose of such ownership is to seek a return on investment and not to engage in the business of the entity:

- We do not routinely exercise operational or management control over the entity;
- We do not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- We have written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the partnership from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and
- We will continue to meet the terms of this certification until we notify the Treasury of a change.

\* \* \* \* \*

Dated: May 17, 2005.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1802

#### RIN AD10

### Head of Contracting Activity (HCA) Change for Exploration Systems Directorate

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the NASA FAR Supplement (NFS) by amending the definition of “head of contracting activity” consistent with the realignment of program management responsibilities between NASA Headquarters and the field centers.

**DATES:** Effective May 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Tom Russell, NASA, Office of Procurement, Program Operations Division; (202) 358–0484; e-mail: [trussell@nasa.gov](mailto:trussell@nasa.gov).

**SUPPLEMENTARY INFORMATION:**

## A. Background

On June 16, 2004, the Assistant Administrator for Procurement approved a deviation to NFS 1802.101 to designate the Associate Administrator for Exploration Systems as head of the contracting activity in lieu of the Center Director(s) for all contracts that directly support the Exploration Systems Mission Directorate (ESMD). This deviation was approved in support of the Headquarters transformation and the realignment of program management responsibilities between NASA Headquarters and the field centers. This final rule implements that deviation.

## B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1802 in accordance with 5 U.S.C. 610.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 1802

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

## PART 1802—DEFINITIONS OF WORDS AND TERMS

■ Accordingly, 48 CFR part 1802 is amended as follows:

■ 1. The authority citation for 48 CFR part 1802 continues to read as follows:

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

■ 2. Amend section 1802.101 by revising the definition of “head of the contracting activity (HCA)” to read as follows:

### 1802.101 Definitions.

\* \* \* \* \*

*Head of the contracting activity (HCA)* means, for field installations, the Director or other head and, for NASA Headquarters, the Assistant Administrator for Management Systems. For International Space Station (ISS) and Space Shuttle Program contracts, the HCA is the Headquarters Deputy Associate Administrator for ISS and Shuttle Programs in lieu of the field Center Director(s). For Exploration Systems Mission Directorate (ESMD) contracts, the HCA is the Associate

Administrator for ESMD in lieu of the field Center Director(s).

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## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Part 9903

#### Cost Accounting Standards Board; Applicability of Cost Accounting Standards Coverage

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Cost Accounting Standards (CAS) Board is revising the criteria applicable to United Kingdom (UK) contractors for filing a Disclosure Statement, Form No. CASB DS-1. This rulemaking is authorized pursuant to section 26 of the Office of Federal Procurement Policy Act. The Board is promulgating this interim rule in order to comply with a specific request by the UK Ministry of Defence to simplify the compliance process with CAS Board disclosure requirements for UK contractors.

**DATES:** *Effective Date:* This rule is effective May 23, 2005.

*Comment Date:* Comments upon this interim rule must be in writing and must be received by July 22, 2005.

**ADDRESSES:** Comments should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503.

Comments should be faxed to Rein Abel, at 202-395-5105.

**FOR FURTHER INFORMATION CONTACT:** Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202-395-3254).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Unlike certain other foreign contractors (*e.g.*, German and Canadian), UK contractors currently have to file a regular CAS Board Disclosure Statement (DS-1) in accordance with CAS regulations. The UK Ministry of Defence initially approached the Board with a request to use the corresponding UK form “Questionnaire on Method of Allocation of Costs” (QMAC), in lieu of

the DS-1. After a review of the content of the QMAC, the UK and U.S. representatives agreed that it did not have the same scope as the DS-1. Therefore, it was agreed that to cover the gap in the coverage a “Supplemental QMAC” was needed.

The CAS Board has approved a Supplemental QMAC that is acceptable to the UK Ministry of Defence, and the CAS Board has received a request from the UK Ministry of Defence to allow UK contractors to submit their basic QMAC, together with the Supplemental QMAC, in lieu of the DS-1. At its meeting on February 23, 2005, the Board agreed to this change in the CAS requirements so that UK contractors with CAS-covered contracts will be allowed to file the UK QMAC together with its Supplement in lieu of the DS-1 required of U.S. contractors.

The Board believes that an interim rule with request for comment is an appropriate mode for the promulgation of this rule. It is based on a request by the UK Ministry of Defense for a specific action regarding the CAS disclosure statement to be used by the UK defense contractors. The Board believes that its response to this request as incorporated in this rule is straight forward and, in essence, non controversial. Therefore, the Board believes that in this instance the Board’s usual “four step” promulgation process is not necessary or appropriate.

To effect this change, the interim rule includes the following revisions:

- (1) The deletion of 9903.201-1(b)(12) (all foreign contractors, including UK contractors, are subject to the requirements at 9903.201-1(b)(4));
- (2) The deletion of 9903.201-4(d); and
- (3) An amendment to 9903.202-1(e) to add the U.K. to the list of the countries whose contractors may file a disclosure form adopted by an agency of their own Government in lieu of the DS-1.

##### B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

##### C. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this interim rule will not result in the promulgation of a “major rule” under the provisions of Executive Order 12866, and that a