

any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

(h) Requesters must agree to pay all fees charged for services associated with their requests. LSC will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester. For requests estimated to exceed \$25, LSC will consult with the requester prior to processing the request, and such requests will not be deemed to have been received by LSC until the requester agrees in writing to pay all fees charged for services. LSC will also make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required (and the request will not be deemed to have been received by LSC until such payment is made); or

(2) LSC determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days of receipt by LSC, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of LSC for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by LSC for purposes of the initial 20-day response period until the requester

makes a deposit on the fee in an amount determined by LSC.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If LSC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, LSC shall aggregate such requests and charge accordingly. Likewise, LSC will aggregate multiple requests for documents received from the same requester within 45 days.

#### **§ 1602.15 Submitter's rights process.**

(a) When LSC receives a FOIA request seeking the release of confidential commercial information, LSC shall provide prompt written notice of the request to the submitter in order to afford the submitter an opportunity to object to the disclosure of the requested confidential commercial information. The notice shall reasonably describe the confidential commercial information requested, inform the submitter of the process required by paragraph (b) of this section, and provide a reasonable time period for the submitter to respond.

(b) If a submitter who has received notice of a request for the submitter's confidential commercial information wishes to object to the disclosure of the confidential commercial information, the submitter must provide LSC within the time period set forth in the notice, a detailed written statement identifying the information which it objects. The submitter must send its objections to the Office of Legal Affairs or, if it pertains to Office of Inspector General records, to the Office of Inspector General, and must specify the grounds for withholding the information under FOIA or this part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. If the submitter fails to respond to the notice from LSC within the time period specified in the notice, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall

give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested confidential commercial information that the requested information should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC's regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Likewise, whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

Dated: December 12, 2016.

**Stefanie K. Davis,**

*Assistant General Counsel.*

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**BILLING CODE P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **48 CFR Parts 1845 and 1852**

**RIN 2700-AE33**

#### **NASA Federal Acquisition Regulation Supplement: Contractor Financial Reporting of Property (2016-N024)**

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

**ACTION:** Final rule.

**SUMMARY:** NASA is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to add a monthly reporting requirement for contractors having custody of \$10 million or more in NASA-owned Property, Plant and Equipment (PP&E).

**DATES:** *Effective:* January 17, 2017.

**FOR FURTHER INFORMATION CONTACT:** Andrew O'Rourke, telephone 202-358-4560.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

NASA published a proposed rule in the **Federal Register** at 81 FR 48726 on July 26, 2016, to amend the NFS to add a monthly reporting requirement at 1852.245-73 for contracts in which the contractor has custody of NASA-owned PP&E valued at \$10 million or more to ensure contractor-held PP&E are more accurately represented in NASA financial statements. Two respondents provided comments in response to the proposed rule.

**II. Discussion and Analysis**

NASA reviewed the public comments in the development of the final rule. A discussion of the comments and any changes made to the rule as a result of these comments is provided, as follows:

*A. Changes.* No changes are being made to the final rule as a result of the public comments received with the exception of minor editorial changes.

*B. Analysis of Public Comments.*

1. Recommend use of different approach to asset management.

*Comment:* One respondent agreed with the overall objective of the rule, but disagreed with NASA's proposed approach and changes in the rule. The respondent commented that the NFS clause is fundamentally flawed, is non-GAAP accounting, and it does not in of itself create adequate infrastructure to provide reliable accounting data and financial reporting. The respondent commented that the clause inappropriately combines and transforms property management accountability data under a contract based upon FAR 45 Government Property, into Financial Accounting Standards Board (FASB) accounting data. The respondent commented that NASA-owned and contractor-furnished internal use property, acquired under a contract that is accountable to a contract is generally not subject to NASA's capitalization threshold of \$500,000; however, what is acquired and furnished includes property transactions for research and development, period cost, program cost . . . , probably very little individual capital items, per FASAB No. 6—Accounting for property, plant, and equipment. The respondent commented that using property accountability data subject to FAR 45, for financial accounting data is wrong, as it does not provide faithful representation of NASA's PP&E as well as external reporting of property accountability in

all other Government agencies is not on a monthly basis. The respondent commented that reporting this information will not result in improved decision making. The respondent also stated that reporting unreliable financial data on a yearly basis or monthly basis is a waste of NASA resources, the cost to increase the reporting cycle from annual to monthly is not inconsequential, and NASA should expect their contractors to ask for a contract modification with due consideration. The respondent recommended that NASA not proceed with the proposed rule, rather NASA should migrate to the new ISO 55000 Asset Management standard.

*Response:* NASA does not concur with the respondent's stance on the proposed rule. The objective of the rule is to clarify and emphasize the supplemental instructions in paragraph (a) of NFS clause 1852.245-73 that all contractors having custody of NASA Property, Plant, and Equipment (PP&E) with a value of \$10 million or more are required to report this information on a monthly basis to NASA. The property reporting requirement is to help assess the efficiency and effectiveness of asset management consistent with the Statement of Federal Financial Accounting Standard (SFFAS) No. 6, Accounting for Property, Plant, and Equipment, and NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies, which implements SFFAS No. 6. The respondent failed to provide data to support their comments concerning the NFS clause or the recommendation to migrate to a new standard. Thus, no changes were made in response to this comment.

2. Difference between monthly and annual reporting.

*Comment:* One respondent submitted the following questions on the proposed rule:

- If a contractor has \$10M worth of property, is reporting is required?
- If the value drops below \$10M, does the contractor stop reporting on a monthly basis?
  - Is the \$10M per contract or the sum of NASA property accountable to the contractor?
  - Is the NASA Form 1018 required for the monthly reporting or is another format/system used?
  - If NASA is going to require monthly financial reporting, are they referring to how the contractor reports monthly financials on the CHATS report or how the contractor reports on the NASA Form 1018?

- Will NASA require the contractor to submit a NASA Form 1018 monthly or a CHATS monthly?

- Currently in the month of September an annual and a monthly financial report is due. Will NASA eliminate one of these if they are going to require 1018s on a monthly basis?

*Response:* If at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of \$10 million or more for the contract, the contractor shall submit a report no later than the 21st of each month. At any time during performance of the contract if the value of property for the contract drops below \$10M, the contractor does not have to submit the monthly report. A contractor having NASA-owned property in their custody of \$10 million or more will be required to report both the monthly and yearly reporting in accordance with the requirements of paragraph (c)(1) and paragraph (c)(2) of the clause utilizing the NASA Form 1018, the NASA Form 1018 Electronic Submission System (NESS), NASA Form 533 Contractor Financial Management Report, and any supplemental instructions issued by the contracting officer. Accordingly, no changes were made in response to this respondent's questions.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

The objective of this rule is to add a monthly reporting requirement for contractors having custody of NASA-owned PP&E valued at \$10 million or greater to ensure that contractor-held PP&E are more accurately represented in NASA financial statements consistent with the Statement of Federal Financial

Accounting Standard (SFFAS) No. 6, Accounting for Property, Plant, and Equipment and NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies.

Two respondents provided comments in response to the proposed rule, but none of the comments were submitted in response to the Initial Regulatory Flexibility Act request in the proposed rule. Thus, no changes were made to the final rule.

NASA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the affected NASA contractors with custody of NASA-owned Property, Plant, and Equipment (PP&E) valued at \$10 million or greater are primarily large businesses.

The requirements under this rule apply to any contract award (including contracts for supplies, services, construction, and major systems) that requires contractors to use Government property. According to NASA Property Records in Fiscal Year (FY) 2015 there were 643 contracts that required reporting NASA contractors with custody of Government property to report that property. Of the 643 contracts, approximately 20% or 129 contracts were with small business contractors. Of the 643 contracts, 32 contracts had NASA-owned and contractor-held PP&E with a value of \$10 million or more and required monthly reporting. Of those 32 contracts, only three were awarded to small business contractors.

Each NASA contractor is required to submit annually the NASA Form 1018, NASA Property in the Custody of Contractors. This rule will add a new reporting requirement requiring contractors to submit a report if at any time during performance of the contract NASA-owned property in the custody of the contractor has a value of \$10 million or more. However, the impact of this reporting requirement is minimal on small entities based on FY 2015 NASA property records that show only three small business contractors with custody of NASA PP&E valued at \$10 million or more. There are no additional professional skills necessary in this area on the part of small businesses.

There are no significant alternatives that could further minimize the already minimal impact on businesses, small or large. New PP&E reporting requirements are the same for both large and small businesses once the NASA-owned PP&E threshold of \$10 million is reached.

## V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the NFS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700-0017, titled NASA Property in the Custody of Contractors and OMB Control No. 9000-0075, titled Government Furnished Property Requirements.

### List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement.

**Manuel Quinones,**

*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1845 and 1852 are amended as follows:

### PART 1845—GOVERNMENT PROPERTY

■ 1. The authority citation for part 1845 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

■ 2. Amend section 1845.107-70 by revising paragraph (d) to read as follows:

#### 1845.107-70 NASA solicitation provisions and contract clauses.

\* \* \* \* \*

(d) The contracting officer shall insert the clause at *1852.245-73*, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts and in all contracts in which the contractor has custody of NASA-owned property with a value of \$10 million or more, unless all property to be provided is subject to the clause at *1852.245-71*, Installation-Accountable Government Property. Insert the clause 1852.245-73 in other types of solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

\* \* \* \* \*

### PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

- 4. Amend section 1852.245-73 by—  
 ■ a. Revising the date of the clause; and  
 ■ b. Revising paragraphs (b)(2) and (c).  
 The revised text reads as follows:

#### 1852.245-73 Financial reporting of NASA property in the custody of contractors.

\* \* \* \* \*

Financial Reporting of NASA Property in the Custody of Contractors (Jan 2017)

\* \* \* \* \*

(b) \* \* \*

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Industrial Property Officer and a copy to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

\* \* \* \* \*

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31st. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31st.

(2) Some activity may be estimated for the month in which the report is submitted, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533) Contractor Financial Management Report cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact

the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(3) In addition to an annual report, if at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of \$10 million or more, the contractor shall also submit a report no later than the 21st of each month in accordance with

the requirements of paragraph (c)(2) of this clause.

(4) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly report in accordance with (c)(3) of this clause, and any supplemental instructions for

the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

\* \* \* \* \*

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