



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1819, and 1852

RIN 2700-AE65

NASA Federal Acquisition Regulation Supplement: NASA Mentor-Protégé Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is finalizing amendments to the NASA Federal Acquisition Regulation Supplement (NFS) to reflect updates to NASA's Small Business Mentor Protégé Program (MPP).

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: R. Todd Lacks, NASA HQ, Office of Procurement Management and Policy Division, LP-011, 300 E. Street SW, Washington, DC 20456-0001. Telephone 202-358-0799 and; facsimile 202-358-3082.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the Federal Register at 88 FR 9421 on February 13, 2023, to update NASA's Small Business Mentor Protégé Program (MPP). Amendments discussed included the requirement of Small Business Specialists' concurrence on the signed letter of endorsement; requirements associated with credit received towards subcontracting goals; changes to the MPP reporting requirement from semi-annually to annually and

editorial changes for clarity. NASA also proposed amendments to reflect the annual negotiation of its small business percentage goals. Finally, these revisions will emphasize collaboration among representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices to reduce barriers to entry and to opportunities for all small business concerns and Historically Black Colleges and Universities or Minority Institutions.

II. Discussion

NASA received no public comments and is finalizing this rule with no changes.

III. Applicability to Commercial Item Acquisitions, Including commercially available off-the-shelf (COTS) items, and Acquisitions Below the Simplified Acquisition Threshold (SAT)

The final rule implements updates to NASA's MPP. Subpart 1819.72 does not limit the application of the program requirements to non-commercial contracts or contracts above the simplified acquisition threshold. Consistent with 41 U.S.C. 1905, 1906 and 1907, the NASA Assistant Administrator for Procurement has determined that it is in the best interest of NASA to apply this policy change to the acquisition of commercial items, including COTS items, and those requirements below the SAT.

IV. 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 rule is not a significant regulatory action as defined in E.O. 12866 and was not reviewed by the Office of Management and Budget (OMB).

V. Regulatory Flexibility Act

NASA does not expect this rule to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* No comments were received on the initial regulatory flexibility analysis and NASA is finalizing it with no changes. A summary is provided below.

The final rule will apply to all current and future participants of the MPP. While the final rule will apply to all classes of small business, it will not necessarily affect all those businesses because the final rule only applies to those that are a part of the MPP. As reported by NASA's Office of Small Business Programs (OSBP), NASA has entered 6, 1, and 3 mentor protégé agreements in 2018, 2019, and 2020, respectively. Therefore, this policy will have minimal impact on small businesses at large.

VI. Paperwork Reduction Act

This rule contains information collection requirements requiring the approval of OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). As part of the proposed rule, NASA requested comments on a reinstatement with change for OMB 2700-0078, *Mentor Protege Program Small Business and Small Disadvantaged Business Concerns*. In the proposed rule, NASA discussed decreasing the collection requirement from semi-annual to annual as the Agency conducts semi-annual Mentor Protégé performance reviews, which are more effective in tracking milestones over the life of the agreement than the submission of semi-annual reports. This change will reduce the reporting requirement on small businesses from semi-annual to annual and still capture necessary information from the semi-annual performance reviews. No comments were received on this change.

List of Subjects in 48 CFR Parts 1801, 1819, and 1852

Government procurement.

Erica Jones,

NASA FAR Supplement Manager.

Accordingly, NASA amends 48 CFR parts 1801, 1819, and 1852 as follows:

1. The authority citation for parts 1801, 1819, and 1852 continue to read as follows:

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

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1801.1—Purpose, Authority, Issuance

2. Revise section 1801.106 to read as follows:

1801.106 Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

NFS Segment	OMB Control Number
1819	2700-0078
1823	2700-0089
1827	2711-0052
1843	2700-0054
1852.223-70	2700-0160
NF533	2700-0003
NF1018	2700-0017

PART 1819 - SMALL BUSINESS PROGRAMS

Subpart 1819.2—Policies

3. Amend section 1819.201 by revising the section heading and paragraph (a)(ii) to read as follows:

1819.201 General policy.

(a) * * *

(ii) NASA annually negotiates Agency small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices

will collaborate to reduce barriers to entry and to increase opportunities for small business concerns, identified in paragraph (a)(i) of this section, and Historically Black Colleges and Universities or Minority Institutions.

Subpart 1819.72—NASA Mentor-Protégé Program

4. Amend section 1819.7201 by:

a. Revising paragraph (a) introductory text; and

b. In paragraph (b), adding the acronym "(MPA)" after the words "mentor-protégé agreements".

The revision reads as follows:

1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) as authorized by the Small Business Administration in accordance with 13 CFR 125.10. The purpose of the program is to:

* * * * *

5. Revise section 1819.7202 to read as follows:

1819.7202 Eligibility.

(a) To be eligible as a mentor, an entity must be -

(1) A large business prime contractor or research institution performing with at least one approved subcontracting plan (other than a commercial plan) negotiated with NASA, pursuant to FAR subpart 19.7. A contractor may apply to become a mentor if they currently are not performing under a NASA contract, as long as they are currently performing another Federal agency contract with an approved subcontracting plan.

However, the NASA MPA will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan.

(2) Eligible for receipt of Government contracts. An entity will not be approved for participation in the program if, at the time of submission of the application to the NASA Mentor Protégé Program Office (MPPPO), the entity is debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4.

(b) To be eligible to participate as a protégé, an entity must be eligible for award of Federal contracts in accordance with FAR subpart 9.4, i.e. entities cannot be suspended or debarred at the time of application for the program and must be classified as one of more of the following entities or socio-economic categories as defined by FAR part 2:

(1) Small disadvantaged business;

(2) Women-owned small or economically disadvantaged women-owned concern;

(3) Veteran-owned or service-disabled veteran-owned small business concern;

(4) Historically underutilized business zone concern;

(5) Historically Black College and University or Minority-Serving Institution;

(6) Current NASA Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Phase II Company; or

(7) An entity participating in the AbilityOne Program.

(c) A protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements.

6. Revise section 1819.7203 to read as follows:

1819.7203 Mentor-protégé advanced payments.

If advance payments are contemplated, the mentor must first have the advance payments approved by the contracting officer in accordance with FAR subpart 32.4.

7. Amend section 1819.7204 by:

- a. Revising paragraphs (a) introductory text and (a)(1) and (3);
- b. Removing paragraph (a)(4);
- c. Redesignating paragraph (a)(5) as paragraph (a)(4);
- d. Removing paragraph (c);
- e. Redesignating paragraph (b) as paragraph (c); and
- e. Adding a new paragraph (b).

The revisions and addition read as follows:

1819.7204 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors, will submit a complete agreement package to the contracting officer, contracting officer's representative (COR), and the cognizant Small Business Specialist (SBS) at the NASA Center. The submission package must include the following:

- (1) A signed MPA;

* * * * *

(3) The estimated cost of the developmental assistance to be provided, broken out per year and per task, in a separate cost volume; and

* * * * *

(b) The NASA MPPPO may require additional information as requested upon agreement submission.

* * * * *

8. Amend section 1819.7205 by:

a. Revising the section heading and paragraph (a);

b. Removing paragraph (c) (4);

c. Redesignating paragraphs (c) (5) and (6) as paragraphs (c) (4) and (5); and

d. Revising paragraph (d).

The revisions read as follows:

1819.7205 Award Fee Program.

(a) Mentors may be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR/STTR Phase II Protégés only. The award fee will be assessed at each award fee determination period.

* * * * *

(d) The Award Fee Program is an addition to the credit agreement, reference 1819.7206. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

9. Add section 1819.7206 to read as follows:

1819.7206 Credit agreement.

In a MPA (as referenced in section 6 "Agreements" of the MPP Guidebook), a mentor receives credit toward its subcontracting goals. The credit agreement only applies to mentors with an Individual Subcontract Plan.

(a) Costs incurred under a credit agreement are applied on a one-to-one basis toward applicable subcontracting goals, under a Federal agency subcontracting plan (FAR subpart 19.7).

(b) The credit is reported on the mentor's individual subcontracting report (ISR) in the comments section twice a year and in the Summary Subcontract Report (SSR) once a year. The MPPPO will verify the dollars contained in the annual reports.

10. Amend section 1819.7212 by revising paragraphs (a), (b), (c) introductory text, and (d) through (g) to read as follows:

1819.7212 Reporting requirements.

(a) Mentors must report on the progress made under active MPA annually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each 12-month period of performance commencing with the start of the agreement.

(c) Each annual report must include the following data on performance under the MPA:

* * * * *

(d) Annually the protégé must provide an independently developed progress report using the annual report template, on

the progress made during the prior twelve months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé annual report required by paragraph (d) of this section must be submitted separately from the mentor's annual report submission.

(f) Reports for all agreements must be submitted to the NASA Mentor Protégé Program Manager, the mentor's cognizant administrative Contracting Officer, and their Small Business Specialist.

(g) Templates for the annual report and the Post-Agreement report and guidance for their submission are available at:
<https://www.nasa.gov/osbp/mentor-protege-program>.

11. Add section 1819.7213 to read as follows:

1819.7213 Reporting allowances.

The mentor may include its developmental expenditures from the annual report, reference 1819.7212, in its reported dollars in its Summary Subcontracting Report (SSR) in the Electronic Subcontracting Reporting System (eSRS).

(a) If the protégé is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the mentor may also include its developmental expenditures in its Individual Subcontracting

Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(b) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the "Remarks" section of each report.

(c) Expenditures for AbilityOne protégés cannot be included in SSR's or ISR's since there is no such reporting category for SSR's or ISR's.

12. Amend section 1819.7215 by revising paragraph (a) to read as follows:

1819.7215 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219-77, NASA Mentor-Protégé Program, in any contract that includes the clause at FAR 52.219-9, Small Business Subcontracting Plan.

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PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Texts of Provisions and Clauses

13. Amend section 1852.219-77 by revising the date of the clause and paragraphs (b) through (d) to read as follows:

1852.219-77 NASA Mentor-Protégé Program.

* * * * *

NASA MENTOR-PROTÉGÉ PROGRAM ([INSERT ABBREVIATED MONTH AND YEAR
OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

(b) The Program consists of—

(1) Mentors, which are large business prime or research institution with at least one approved NASA subcontracting plan;

(2) Protégés, which qualify as one or more of the following:

(i) Small Business Concern, as defined in FAR part 2, Definitions of Parts and Terms, including: Women-Owned or Economically-Owned Concern; Veteran-Owned or Service-Disabled Veteran-Owned Small Business Concern; Historically Underutilized Business Zone Concern;

(ii) Historically Black College and University or Minority-Serving Institution;

(iii) Current NASA SBIR/STTR Phase II Company; or

(iv) An Entity Participating in the AbilityOne Program;

(3) MPA endorsed by the cognizant NASA centers and approved by the NASA MPPPO; and

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7205.

(c) Mentor participation in the program, described in NFS 1819.72, means providing technical, managerial, and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA, as well as other Federal and commercial contracts and subcontracts.

(d) Eligible businesses and research institutions interested in participating in the program are encouraged to contact the NASA MPPO.

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14. Amend section 1852.219-79 by:

- a. Revising the date of the clause and paragraph (a);
- b. Removing the undesignated text following paragraph (a);
- c. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g);
- d. Adding a new paragraph (b);
- e. Revising newly redesignated paragraphs (c) introductory text and (c) (3) and (4);
- f. Removing newly redesignated paragraph (c) (5); and
- g. Revising newly redesignated paragraphs (d) through (g).

The revisions and addition read as follows:

1852.219-79 Mentor requirements and evaluation.

* * * * *

MENTOR REQUIREMENTS AND EVALUATION ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to:

- (1) Provide incentives to NASA contractors, performing under at least one active approved subcontracting plan negotiated with NASA to assist protégés in enhancing their

capabilities to perform as viable NASA, other Government, and commercial suppliers on contract and subcontract requirements;

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) The Mentor shall comply with the annual reporting requirements detailed in NASA FAR Supplement 1819.7212.

(c) NASA will evaluate the Mentor's performance on the following factors in the subcontracting element of the annual Contractor Performance Assessment Report (CPAR). If this contract includes an award fee incentive, this evaluation will also be included as part of the subcontracting element in the award fee evaluation process.

* * * * *

(3) The extent to which the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) The extent to which the mentor has contributed to advancing the protégé's technical readiness level. This factor only applies if the protégé is a current NASA SBIR/STTR Phase II contractor.

(d) Annual reports shall be submitted by the Mentor and the Protégé to the MPPPO, following the annual report template found on the website at www.nasa.gov/osbp.

(1) Except for as noted in paragraph (d)(4) of this section, the Mentor may include its developmental expenditures from the annual report, reference 1819.7212, Reporting Requirements, in its reported dollars in its Summary Subcontracting Report (SSR) in eSRS.

(2) If the protégé is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the Mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(3) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the "Remarks" section of each report.

(4) Expenditures for AbilityOne protégés cannot be included in SSR's or ISR's, since there is no such reporting category for SSR's or ISR's.

(e) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the Mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program.

(f) Every six months, the Mentor and Protégé, as appropriate, will formally brief the MPPPO, and the contracting officer during a formal program review regarding program accomplishments, as it pertains to the approved agreement.

(g) NASA may terminate MPA for good cause, thereby excluding mentors or protégés from participating in the program. These actions shall be approved by the MPPPO. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement.

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