

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 1819—SMALL BUSINESS PROGRAMS

Sec.

1819.001 Definitions.

#### Subpart 1819.2—Policies

1819.201 General policy.

1819.202 Specific policies.

1819.202-1 Encouraging small business participation in acquisitions.

#### Subpart 1819.3—Determination of Status as a Small Business, HUBZone Small Business, or Small Disadvantaged Business Concern

1819.302 Protesting a small business representation.

#### Subpart 1819.5—Set-Asides for Small Business

1819.502 Setting aside acquisitions.

1819.502-70 Non-initiation of set-asides.

1819.502-3 Partial set-asides.

1819.502-370 NASA reporting requirements.

1819.505 Rejecting Small Business Administration recommendations.

1819.506 Withdrawing or modifying small business set-asides.

#### Subpart 1819.6—Certificates of Competency and Determinations of Responsibility

1819.602 Procedures.

1819.602-1 Referral.

1819.602-3 Resolving differences between the agency and the Small Business Administration.

1819.602-370 NASA procedures.

#### Subpart 1819.7—The Small Business Subcontracting Program

1819.705-2 Determining the need for a subcontracting plan.

1819.705-4 Reviewing the subcontracting plan.

1819.705-470 Acquisition-specific subcontracting goals.

1819.708 Contract clauses.

1819.708-70 NASA solicitation provision and contract clause.

#### Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)

1819.804 Evaluation, offering, and acceptance.

1819.804-1 Agency evaluation.

#### Subpart 1819.10—Small Business Competitiveness Demonstration Program

1819.1005 Applicability.

#### Subpart 1819.70—NASA 8 Percent Goal

1819.7000 General.

1819.7001 Definitions.

1819.7002 Contracting officer responsibility.

1819.7003 Contract clause.

#### Subpart 1819.71—NASA Rural Area Small Business Plan

1819.7101 Definition.

1819.7102 General.

1819.7103 Solicitation provision and contract clause.

#### Subpart 1819.72—NASA Mentor-Protege Program

1819.7201 Scope of subpart.

1819.7202 Definitions.

1819.7203 Non-affiliation.

1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege program to NASA contractors.

1819.7205 General policy.

1819.7206 Incentives for prime contractor participation.

1819.7207 Measurement of Program success.

1819.7208 Mentor firms.

1819.7209 Protege firms.

1819.7210 Selection of protege firms.

1819.7211 Application process for mentor firms to participate in the Program.

1819.7212 OSDBU review and approval process of agreement.

1819.7213 Agreement contents.

1819.7214 Developmental assistance.

1819.7215 Obligation.

1819.7216 Internal controls.

1819.7217 Reports.

1819.7218 Program review.

1819.7219 Solicitation provision and contract clauses.

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

SOURCE: 62 FR 36707, July 9, 1997, unless otherwise noted.

**1819.001 Definitions.**

*High-Tech* as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

**Subpart 1819.2—Policies****1819.201 General policy. (NASA supplements paragraphs (a), (c), (d), and (f))**

(a)(i) NASA is committed to providing to small, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) NASA annually negotiates Agency small, HUBZone, small disadvantaged, and women-owned 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, NASA has the following statutory goals based on the total value of prime and subcontract awards:

(A) Under Public Laws 101-144, 101-507, and 102-389, an annual goal of at least 8 percent for prime and subcontract awards to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small businesses (WOSBs) (see 1819.7000); and

(B) Under 10 U.S.C. 2323, an annual goal of 5 percent for prime and subcontract awards to SDBs, HBCUs, and WOSBs.

(c) The Associate Administrator for Small and Disadvantaged Business Utilization (Code K) is the Agency official responsible for carrying out the duties in FAR 19.201(c).

(d)(i) The center director shall designate a qualified individual in the

contracting office as a small business specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in NASA acquisitions. The small business specialist shall also perform other functions specifically set forth in this section 1819.201 or that the procurement officer may prescribe, with the concurrence of the Associate Administrator for Small and Disadvantaged Business Utilization, for implementing the Small Business Program. When the center director considers that the volume of acquisitions or the functions relating to acquisitions at the center do not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(ii) Small business specialists appointed under paragraph (d)(i) of this subsection shall perform the following duties, as the procurement officer determines appropriate to the installation:

(A) Maintain a program designed to locate capable small business sources, including those located in labor surplus areas, for current and future acquisitions.

(B) Coordinate inquiries and requests for advice from small business concerns on acquisition matters.

(C) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including making recommendations for initiation of set-asides (see FAR 19.5 and 19.8) and for taking action in accordance with FAR 19.506(b) and 1819.502-70. Participate and provide input early in the acquisition planning phase of proposed acquisitions, including acquisition strategy meetings.

(D) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, work with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for current or future acquisitions will be available.

(E) Review acquisitions for possible breakout of items suitable for acquisition from small business concerns.

(F) Advise small business concerns regarding financial assistance available under laws and regulations, assist such concerns in applying for such assistance, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(G) Participate in responsibility determinations (see FAR 9.103) when small business concerns are involved.

(H) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705-4).

(I) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(J) Ensure that participation of small business concerns is accurately reported.

(K) Make available to SBA copies of solicitations when requested.

(L) Act as liaison between contracting officers and SBA area offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved.

(M) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(N) When a small business concern's offer has been rejected for non-responsiveness or nonresponsibility, assist that concern, upon its request, in understanding such requirements for future awards.

(O) Advise center personnel, as necessary, on new Governmentwide and Agency-approved small business programs and initiatives.

(f)(1) The NASA Ombudsman, the Director of the Contract Management Division (Code HK), is the designated offi-

cial for determining whether the use of the SDB mechanism in FAR subpart 19.11 has resulted in an undue burden on non-SDB firms in the Department of Commerce designated SIC Major Groups, or is otherwise inappropriate.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999; 65 FR 38777, June 22, 2000]

#### **1819.202 Specific policies.**

##### **1819.202-1 Encouraging small business participation in acquisitions.**

#### **Subpart 1819.3—Determination of Status as a Small Business, HUBZone Small Business, or Small Disadvantaged Business Concern**

##### **1819.302 Protest of a small business representation. (NASA supplements paragraph (d))**

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

#### **Subpart 1819.5—Set-Asides for Small Business**

##### **1819.502 Setting aside acquisitions.**

##### **1819.502-70 Non-initiation of set-asides.**

(a) All cases involving the non-initiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a decision by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review.

(b) If the small business specialist recommends that an individual acquisition or a class of acquisition, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) When an SBA representative is assigned and available and the contracting officer disapproves the small business specialist's recommendation, the contracting officer shall promptly

refer the case to the SBA representative for review. The small business specialist shall take no further appeal action. The SBA representative must either concur with the decision or appeal the case to the procurement officer under FAR 19.505. If the procurement officer approves the contracting officer's decision and the SBA appeals under FAR 19.505(c), the procurement officer shall forward the required written justification, including a history of discussions between the center and the SBA and rationale for the decision, to the Headquarters Office of Procurement (HS).

(d) When an SBA representative is not assigned or available and the contracting officer disapproves the small business specialist's recommendation, the small business specialist may appeal in writing to the procurement officer. The procurement officer's decision shall be final. The contracting officer shall place a memorandum of the procurement officer's decision in the contract file. If the procurement officer's decision approves the contracting officer's action, the small business specialist shall forward complete documentation of the case to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

(e) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of nonconurrence in a recommended set-aside action.

**§ 1819.502-3 Partial set-asides.**

**§ 1819.502-370 NASA reporting requirements.**

The contracting officer shall separately report, in accordance with Subpart 1804.6, awards of the non-set-aside portions of small business set-aside acquisitions.

**1819.505 Rejecting Small Business Administration recommendations.**

See 1819.502-70.

**1819.506 Withdrawing or modifying small business set-asides. (NASA supplements paragraph (b))**

(b) If an SBA representative is not assigned or available, and the small business specialist disagrees with the contracting officer's written decision of withdrawal or modification of a set-

aside determination, the small business specialist may appeal to the procurement officer in accordance with the procedures in 1819.502-70(d).

**Subpart 1819.6—Certificates of Competency and Determinations of Responsibility**

**1819.602 Procedures.**

**1819.602-1 Referral. (NASA supplements paragraph (a))**

(a) On proposed awards exceeding the simplified acquisition threshold, the contracting officer should consider requesting a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible. The scope of the preaward survey request should be limited to those elements of responsibility that are questioned.

(2) The contracting officer shall forward a copy of the referral to SBA through the procurement officer to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

**1819.602-3 Resolving differences between the agency and the Small Business Administration.**

**1819.602-370 NASA procedures.**

(a) When agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall forward to the Headquarters Office of Procurement (Code HS) on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a COC, and the contracting officer's comments. The contracting officer shall suspend acquisition action until informed by Code HS of the final decision in the case.

(b) If the Office of Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a COC, Code HS shall inform the contracting officer.

(c) If the Office of Procurement agrees with the contracting officer's

recommended appeal action, the Associate Administrator for Procurement shall forward the appeal through the Office of Small and Disadvantaged Business Utilization (Code K) to SBA Headquarters.

### **Subpart 1819.7—The Small Business Subcontracting Program**

#### **1819.705-2 Determining the need for a subcontracting plan. (NASA supplements paragraph (d))**

(d) Solicitations for competitive negotiated acquisitions shall require proposed subcontracting plans with initial proposals (see 1819.708(b)(1)). For sole source negotiated acquisitions, the contractor shall be required to submit a proposed subcontracting plan with the proposal.

#### **1819.705-4 Reviewing the subcontracting plan.**

#### **1819.705-470 Acquisition-specific subcontracting goals.**

Section 1819.201 addresses Agency-wide goals at the combined prime and subcontract levels. Appropriate subcontracting goals for an individual acquisition, however, are to be independently determined on the basis of the specific circumstances of the acquisition, consistent with FAR 19.705-4 and 1819.7002(b), and not on the basis of an Agencywide or center goal. Acquisition-specific subcontracting goals should reflect maximum practicable opportunities for all categories of small business concerns to participate in NASA programs, consistent with efficient performance. The methods outlined in NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, may also be useful in establishing reasonable subcontracting goals for small, HUBZone, and women-owned small business concerns.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999]

#### **1819.708 Contract clauses. (NASA supplements paragraph (b))**

(b)(1) The contracting officer shall use the clause at FAR 52.219-9 with its Alternate II when contracting by negotiation.

#### **1819.708-70 NASA solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 1852.219-73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219-9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.21975, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219-9, except for contracts covered by an approved commercial plan.

[64 FR 25215, May 11, 1999]

### **Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)**

#### **1819.804 Evaluation, offering, and acceptance.**

##### **1819.804-1 Agency evaluation.**

The small business specialist shall review and evaluate all acquisition requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

### **Subpart 1819.10—Small Business Competitiveness Demonstration Program**

#### **1819.1005 Applicability. (NASA supplements paragraph (b))**

(b) The targeted industry categories for NASA and their Standard Industrial Classification (SIC) codes are:

SIC—Industry  
Code—Category  
3571—Electronic Computers  
3577—Computer Peripheral Equipment, not elsewhere classified  
3663—Radio & TV Broadcasting and Communications Equipment  
3764—Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts  
3769—Guided Missile and Space Vehicle Parts and Auxiliary Equipment, not elsewhere classified  
3812—Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments

## 1819.7000

3827—Optical Instruments and Lenses  
7371—Computer Programming Services  
7373—Computer Integrated Systems Design  
7379—Computer Related Services, not elsewhere classified.

### Subpart 1819.70—NASA 8 Percent Goal

#### 1819.7000 General.

Public Laws 101-144, 101-507, and 102-389 require the NASA Administrator to ensure, to the fullest extent possible, that at least 8% of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

#### 1819.7001 Definitions.

(a) *Small Disadvantaged Business (SDB) concern* and *Women-Owned Small Business (WOSB) concern* are defined in FAR 19.001.

(b) *Historically Black College or University (HBCU)* and *Minority Institution (MI)* are defined in FAR 26.301.

#### 1819.7002 Contracting officer responsibility.

(a) Contracting officers must seek out as potential sources entities identified in 1819.7001 and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

(b) NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, contains guidance on developing realistic goals. It is applicable to acquisitions expected to exceed \$50 million, including options. The methodology may be used for lesser value acquisitions.

#### 1819.7003 Contract clause.

The contracting officer shall insert the clause at 1852.219-76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when

## 48 CFR Ch. 18 (10-1-00 Edition)

the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

### Subpart 1819.71—NASA Rural Area Small Business Plan

#### 1819.7101 Definition.

*Rural area* means a county with a population of fewer than twenty thousand individuals.

#### 1819.7102 General.

Pursuant to Public Law 100-590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

#### 1819.7103 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.219-74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed \$500,000 (\$1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

### Subpart 1819.72—NASA Mentor-Protege Program

#### § 1819.7201 Scope of subpart.

The NASA Mentor-Protege Program is designed to incentivize NASA prime contractors to assist small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small business (WOSB) concerns, in enhancing their

capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

[64 FR 10571, Mar. 5, 1999]

**1819.7202 Definitions.**

*High-Tech* is defined in 1819.001.

**1819.7203 Non-affiliation.**

For purposes of the Small Business Act, a protege firm may not be considered an affiliate of a mentor firm solely on the basis that the protege firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the Program. In addition, NASA shall not consider partial ownership, up to 10 percent, of a Department of Defense (DOD)-sanctioned protege firm by its DOD mentor to constitute affiliation.

**1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protege program to NASA contractors.**

(a) In accordance with the benefits authorized by the DOD Mentor-Protege Program (Public Law 101-510, Section 831, as amended by Public Law 102-190, Section 814), a NASA contractor who is also an approved DOD mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the proteges which they are assisting under the DOD Program (Public Law 101-510, Section 831(f)(2)).

(c) NASA prime contractors may count the costs of developmental assistance provided of proteges being assisted under the DOD Program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102-190, Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to

the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and minority institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features from the DOD Mentor-Protege Program to NASA prime contractors. NASA mentors will be held to show "good faith" by providing actual developmental assistance beyond transferring credit from activity in the DOD Program to NASA subcontracting plans.

**1819.7205 General policy.**

(a) Eligible large business prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", who have at least one active subcontracting plan, and who are approved as mentor firms may enter into agreements with eligible entities (as defined in 1819.7209) as proteges to provide appropriate developmental assistance to enhance the capabilities of proteges to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", and that are capable of providing developmental assistance to proteges, may also be approved as mentors. An active mentor-protege arrangement requires the protege to be a subcontractor under the mentor's prime contract with NASA.

(b) The Mentor-Protege program may be used in cost reimbursement type contracts and contracts that include an award fee incentive. Costs incurred by a mentor to provide the developmental assistance described in 1819.7214 are allowable. Except for cost-plus-

**§ 1819.7206**

award-fee contracts, such proposed costs shall not be included in the cost base used to develop a fee objective or to negotiate fee. On contracts with an award fee incentive, a contractor's Mentor-Protege efforts shall be evaluated under the award fee evaluations.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10571, Mar. 5, 1999]

**§ 1819.7206 Incentives for prime contractor participation.**

(a) Proposed mentor-protege efforts, except for the extent of participation of proteges as subcontractors, shall be evaluated under the Mission Suitability factor. The participation of SDB proteges as subcontractors shall be evaluated separately as a Mission Suitability subfactor (see FAR 15.304(c)(4) and 19.1202). The participation of other categories of proteges as subcontractors may be evaluated separately as part of the evaluation of proposed subcontracted efforts.

(b) Under contracts with award fee incentives, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. For purposes of earning award fee, the mentor firm's performance shall be evaluated against the criteria described in the clause at 1852.219-79, Mentor Requirements and Evaluation. This award fee evaluation shall not include assessment of the contractor's achievement of FAR 52.219-9 subcontracting plan SDB goals or proposed monetary targets for SDB subcontracting (see FAR 19.1203).

[64 FR 10571, Mar. 5, 1999, as amended at 65 FR 30013, May 10, 2000; 65 FR 46628, July 31, 2000]

**1819.7207 Measurement of Program success.**

The overall success of the NASA Mentor-Protege Program encompassing all participating mentors and proteges will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontractors awarded to proteges by mentor firms under NASA contracts since the date of entry into the Program;

(b) An increase in the number and dollar value of contract and sub-

**48 CFR Ch. 18 (10-1-00 Edition)**

contract awards to protege firms since the time of their entry into the Program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protege firm by its mentor firm; and

(d) An increase in subcontracting with protege firms in industry categories where they have not traditionally participating within the mentor firm's activity.

**1819.7208 Mentor firms.**

(a) Eligibility:

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by FAR 19.7; and

(3) Small business prime contractors that can provide developmental assistance to enhance the capabilities of proteges to perform as subcontractors and suppliers.

(b) Mentors will be encouraged to identify and select as proteges:

(1) A broad base of firms including those defined as emerging firms (e.g., a protege whose size is no greater than 50 percent of the size standard applicable to the SIC code assigned to a contracting opportunity);

(2) Firms in addition to those with whom they have established business relationships; and

(3) High-tech firms.

**1819.7209 Protege firms.**

(a) For selection as a protege, a firm must be:

(1) An SDB in the SIC Major Groups as determined by the Department of Commerce (see FAR 19.201(b)), HBCU, MI, or WOSB;

(2) Certified as small in the SIC code for the services or suppliers to be provided by the protege under its subcontract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) Except for SDBs, a protege firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential proteges that

they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

(c) Proteges may have multiple mentors. Proteges participating in mentor-protege programs in addition to the NASA Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10571, Mar. 5, 1999]

**1819.7210 Selection of protege firms.**

(a) Mentor firms will be solely responsible for selecting protege firms. The mentor is encouraged to identify and select the types of protege firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protege.

(c) The selection of protege firms by mentor firms may not be protested, except for a protest regarding the size or eligibility status of an entity selected by a mentor to be a protege. Such protests shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) (Code K) of the protest.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

**1819.7211 Application process for mentor firms to participate in the Program.**

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the Program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of

application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of the NASA field center where support is provided;

(3) The number of proposed mentor-protege arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar value of subcontracts awarded under NASA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities defined as proteges.

(6) Information on the proposed types of developmental assistance. For each proposed mentor-protege relationship include information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities for the protege firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protege agreement under the NASA Program, that they intend to cooperate in the establishment of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in 1819.7215 and all other provisions governing the Program.

**1819.7212 OSDBU review and approval process of agreement.**

(a) The information specified in 1819.7211(b) is reviewed by the NASA OSDBU. This review will be completed no later than 30 days after receipt by the OSDBU. The OSDBU will provide a copy of the submitted information to

**1819.7213**

the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates an agreement with the protege; and

(2) Submits an original and two (2) copies of the agreement to the OSDBU for approval by the NASA Mentor-protege program manager, the NASA technical program manager, and the contracting officer.

(c) Upon agreement approval, the mentor may implement a developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

**1819.7213 Agreement contents.**

The contents of the agreement must contain:

(a) Names and addresses of mentor and protege firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protege firm, OSDBU, and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protege;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protege firm, to include a description of the subcontract work, and a sched-

**48 CFR Ch. 18 (10-1-00 Edition)**

ule for providing assistance and criteria for evaluation of the protege developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protege firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

**1819.7214 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protege include:

(a) Management guidance relating to—

(1) Financial management,

(2) Organizational management,

(3) Overall business management/planning, and

(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of subcontracts under NASA contracts;

(d) Progress payments based on costs. The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

(e) Advance payments. While a mentor can make advance payments to its proteges who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if advance payments have been authorized in accordance with 1832.409-170;

(f) Loans;

(g) Rent-free use of facilities and/or equipment; and

(h) Temporary assignment of personnel to the protege for purpose of training.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

**1819.7215 Obligation.**

(a) The mentor or protege may voluntarily withdraw from the Program as mutually agreed by both mentor and protege.

(b) Mentor and protege firms will submit a "lessons learned" evaluation

## National Aeronautics and Space Administration

1819.7219

to the NASA OSDBU at the conclusion of each NASA contract subject to the approved Mentor-Protege agreement.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

### 1819.7216 Internal controls.

(a) The NASA OSDBU will manage the Program. Internal controls will be established by the OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing any semi-annual progress reports submitted by mentors and proteges on protege development to measure protege progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where mentor-protege activity is occurring.

(b) NASA may terminate mentor-protege agreements for good cause and exclude mentor or protege firms from participating in the NASA program. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice 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 protege. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h).

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

### 1819.7217 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protege program manager, the NASA OSDBU, to include information as outlined in 1852.219-79(b).

(b) Proteges are encouraged to submit semi-annual reports to the OSDBU on Program progress pertaining to their mentor-protege agreement. However, costs associated with the preparation of these reports are unallowable

costs under Government contracts and will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protege Program in a quarterly 'Strengths and Weaknesses' evaluation report. A copy of this assessment will be provided to the OSDBU and the contracting officer.

(d) The NASA Mentor-Protege program manager will submit semi-annual reports to the cognizant contracting officer regarding the participating prime contractor's performance in the Program for use in the award fee determination process.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

### 1819.7218 Program review.

At the conclusion of each year in the Mentor-Protege Program, the prime contractor and protege, as appropriate, will formally brief the NASA OSDBU, the technical program manager, and the contracting officer regarding Program accomplishments pertaining to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

### 1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219-77, NASA Mentor-Protege Program, in:

(1) Cost reimbursement solicitations and contracts, or solicitations and contracts with award fee incentives, that include the clause at FAR 52.219-9, Small Business Subcontracting Plan;

(2) Small business set-asides of the contract types in (a)(1) of this section with values exceeding \$500,000 (\$1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the clause at 1852.219-79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a

**Pt. 1822**

participant in the NASA Mentor-Protege Program.

[62 FR 36707, July 9, 1997, as amended at 64 FR 10572, Mar. 5, 1999]

**PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

Sec.

1822.000-70 Scope of part.

**Subpart 1822.1—Basic Labor Policies**

1822.101 Labor relations.

1822.101-1 General.

1822.101-3 Reporting labor disputes.

1822.101-4 Removal of items from contractors' facilities affected by work stoppages.

1822.101-70 Admission of labor representatives to contract sites.

1822.103 Overtime.

1822.103-4 Approvals.

1822.103-5 Contract clauses.

**Subpart 1822.3—Contract Work Hours and Safety Standards Act**

1822.302 Liquidated damages and overtime pay.

**Subpart 1822.4—Labor Standards for Contracts Involving Construction**

1822.400-70 Contacts with the Department of Labor.

1822.404-3 Procedures for requesting wage determinations.

1822.406-8 Investigations.

1822.406-9 Withholding from or suspension of contract payments.

1822.406-13 Semiannual enforcement reports.

**Subpart 1822.6—Walsh-Healey Public Contracts Act**

1822.604 Exemptions.

1822.604-2 Regulatory exemptions.

**Subpart 1822.8—Equal Employment Opportunity**

1822.804 Affirmative action programs.

1822.804-2 Construction.

1822.807 Exemptions.

1822.810 Solicitation provisions and contract clauses.

**Subpart 1822.10—Service Contract Act of 1965**

1822.1001 Definitions.

1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).

**48 CFR Ch. 18 (10-1-00 Edition)**

1822.1008-7 Required time of submission of notice.

1822.1008-270 Additional information for the preparation of SF 98/98a.

**Subpart 1822.13—Disabled Veterans and Veterans of the Vietnam ERA**

1822.1303 Waivers.

1822.1306 Complaint procedures.

**Subpart 1822.14—Employment of Workers with Disabilities**

1822.1403 Waivers.

1822.1406 Complaint procedures.

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

SOURCE: 61 FR 55755, Oct. 29, 1996, unless otherwise noted.

**1822.000-70 Scope of part.**

(a) Contracting officers shall consult with the installation labor relations advisor or designee when taking any of the actions prescribed or authorized in FAR part 22 or part 1822.

(b) Proposed actions having a substantial impact on the activities of NASA or other Government agencies shall be approved by the Headquarters Contractor Industrial Relations Office (Code JLR).

**Subpart 1822.1—Basic Labor Policies**

**1822.101 Labor relations.**

**1822.101-1 General. (NASA supplements paragraph (d))**

(d) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall:

(i) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor may be approached only through the prime contractor;

(ii) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(iii) Consider taking the actions described in FAR 22.101-4.

(e) Programs or requirements that result in contracts in excess of the simplified acquisition threshold shall require contractors to notify NASA of actual or potential labor disputes that are delaying or threaten to delay timely contract performance.

[61 FR 55755, Oct. 29, 1996, as amended at 64 FR 14148, Mar. 24, 1999]

**1822.101-3 Reporting labor disputes.**

Reports of potential or actual labor disputes affecting NASA acquisitions, operations, or services shall be submitted to the Headquarters Contractor Industrial Relations Office (Code JLR). These reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made to provide appropriate additional information. Reports shall be described at a minimum:

(1) The nature of the potential or actual dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(2) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and their relationship to the total acquisition program;

(3) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(4) The need for and availability of alternative resources to furnish the items involved within the time required;

(5) Any critical items that should be removed from the plant or work site or should continue to be processed there with the consent of the parties to the dispute; and

(6) Recommended action to be taken by NASA.

**1822.101-4 Removal of items from contractors' facilities affected by work stoppages. (NASA supplements paragraph (a))**

(a) (3) The contracting officer shall obtain approval from Code JLR for any contemplated action.

**1822.101-70 Admission of labor representatives to contract sites.**

NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with safety and security regulations and performance of the contract work involved.

**1822.103 Overtime.**

**1822.103-4 Approvals. (NASA supplements paragraph (a))**

(a) The contracting officer is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving official shall obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which premiums will be approved. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office.

**1822.103-5 Contract clauses. (NASA supplements paragraph (a))**

(a) See 1822.101-1(e).

[64 FR 14149, Mar. 24, 1999]

1822.302

**Subpart 1822.3—Contract Work Hours and Safety Standards Act**

**1822.302 Liquidated damages and overtime pay. (NASA supplements paragraphs (c) and (d))**

(c) The Director of the Headquarters Contractor Industrial Relations Office (Code JLR) is the agency head designee.

(d) Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director of Code JLR.

**Subpart 1822.4—Labor Standards for Contracts Involving Construction**

**1822.400–70 Contacts with the Department of Labor.**

All contacts with the Department of Labor required by FAR subpart 22.4, except for wage determinations, shall be conducted through the Headquarters Contractor Industrial Relations Office (Code JLR). Contracting officers shall submit all pertinent information to Code JLR in support of Code JLR for contacts. For wage determinations, contracting officers shall submit all requests directly to Goddard Space Flight Center, Contractor Industrial Relations Office—GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC).

[63 FR 32763, June 16, 1998]

**1822.404–3 Procedures for requesting wage determinations.**

Contracting officers shall submit requests for project wage determinations to GSFC at least 55 days (70 days if possible) before issuing the solicitation.

[61 FR 55755, Oct. 29, 1996, as amended at 63 FR 32763, June 16, 1998]

**1822.406–8 Investigations. (NASA supplements paragraphs (a) and (d))**

(a) The contracting officer is responsible for conducting investigations of labor violations relative to contracts under their cognizance.

(d) Reports of violations shall be sent to Code JLR.

[61 FR 55755, Oct. 29, 1996, as amended at 63 FR 32763, June 16, 1998]

48 CFR Ch. 18 (10–1–00 Edition)

**1822.406–9 Withholding from or suspension of contract payments. (NASA supplements paragraph (c))**

(c)(4) Code JLR shall determine the disposal of funds.

**1822.406–13 Semiannual enforcement reports.**

Procurement officers shall submit semiannual enforcement data within 20 days after the end of the specified reporting periods to the Headquarters Office of Procurement (Code HK). Negative statements are required.

**Subpart 1822.6—Walsh-Healey Public Contracts Act**

**1822.604 Exemptions.**

**1822.604–2 Regulatory exemptions. (NASA supplements paragraph (c))**

(b) Requests for exemptions shall be submitted in writing through the contracting officer to the Headquarters Contractor Industrial Relations Office (Code JLR).

[61 FR 55755, Oct. 29, 1996, as amended at 62 FR 36713, July 9, 1997]

**Subpart 1822.8—Equal Employment Opportunity**

**1822.804 Affirmative action programs.**

**1822.804–2 Construction. (NASA supplements paragraph (b))**

(b) The Headquarters Office of Procurement (Code HK) will furnish each procurement officer the listing.

**1822.807 Exemptions.**

Requests for exemption pursuant to FAR 22.807(a)(1), (a)(2), or (b)(5) shall be sent to the Headquarters Office of Procurement (Code HS).

**1822.810 Solicitation provisions and contract clauses. (NASA supplements paragraph (e))**

(e) If an offeror completes a negative representation under FAR 52.222–22, the contracting officer shall obtain the information required by FAR 52.222–26(b)(7) within 30 days of contract award. The information shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4).

**Subpart 1822.10—Service Contract Act of 1965**

**1822.1001 Definitions.**

*Agency labor advisor* is the Director of the Headquarters Contractor Industrial Relations Office (Code JLR). All contacts with other agencies required by FAR subpart 22.10 shall be conducted through Code JLR. Contracting officers shall submit all pertinent information to Code JLR in support of the required contacts.

**1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).**

**1822.1008-7 Required time of submission of notice.**

(a) Contracting officers shall submit the notices to Goddard Space Flight Center, Contract Industrial Relations Office—GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC) at least 70 days before initiating the associated contract actions.

(b) When the circumstances in FAR 22.1008-7(b) apply, contracting officers shall submit the required notices to GSFC at least 40 days before initiating the associated contract actions.

(c) Contracting officers shall contact GSFC before initiating any action when the circumstances in FAR 22.1008-7(c) and (d) apply.

[63 FR 32763, June 16, 1998]

**1822.1008-270 Additional information for the preparation of SF 98/98a.**

The information listed in this section by item number shall be furnished, in addition to that required by the SF 98/98a:

(a) Item 6. Insert on the far left side of the block the code identifying the type of proposed action:

| Code | Proposed action   |
|------|---|
| I    | New contract (use <i>only</i> when services are not presently being performed).   |
| II   | Recompetition of services.  |
| III  | Contract modifications affecting the scope of the work.   |
| IV   | Extension of contract performance through exercise of an option or otherwise.   |
| V    | Other. When a multiple year contract (funding is not subject to annual appropriation) is to be entered into, specify "multiple year R&D funded" on the SF 98. |

(b) Item 8. (1) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If no wage determination is available for the particular contract, insert "None" in Item 8.b.

(c) Item 10. Add the solicitation number.

(d) Item 12. (1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) of this subsection), list only the classes of work that the incumbent indicates are "nonexempt."

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) Item 13. If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) Item 14. Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

**Subpart 1822.13—Disabled Veterans and Veterans of the Vietnam Era**

**1822.1303 Waivers. (NASA supplements paragraph (c))**

(c) Requests for waivers shall be submitted to the Associate Administrator for Equal Opportunity Programs (Code E).

**1822.1306**

**1822.1306 Complaint procedures.**

Contracting officers shall submit all complaints to the Associate Administrator for Equal Opportunity Programs (Code E).

**Subpart 1822.14—Employment of Workers with Disabilities**

**1822.1403 Waivers. (NASA supplements paragraph (c))**

(c) Requests for waivers shall be submitted to the Associate Administrator for Equal Opportunity Programs (Code E).

**1822.1406 Complaint procedures.**

Contracting officers shall submit all complaints to the Associate Administrator for Equal Opportunity Programs (Code E).

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

Sec.

1823.106 Delaying award.

1823.107 Compliance responsibilities.

**Subpart 1823.3—Hazardous Material Identification and Material Safety Data**

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

**Subpart 1823.5—Drug-Free Workplace**

1823.570 Drug- and alcohol-free workforce.

1823.570-1 Scope.

1823.570-2 Definitions.

1823.570-3 Contract clause.

1823.570-4 Suspension of payments, termination of contract, and debarment and suspension actions.

**Subpart 1823.70—Safety and Health**

1823.7001 NASA solicitation provisions and contract clauses.

**Subpart 1823.71—Frequency Authorization**

1823.7101 Contract clause.

1823.7102 Procedures.

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

SOURCE: 61 FR 55757, Oct. 29, 1996, unless otherwise noted.

**48 CFR Ch. 18 (10-1-00 Edition)**

**Subpart 1823.3—Hazardous Material Identification and Material Safety Data**

**1823.370 Acquisition of potentially hazardous items from or through another Government agency.**

When acquiring supplies or services from or through another Government agency (e.g., see FAR part 8 and FAR subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR subpart 23.3.

**Subpart 1823.5—Drug-Free Workplace**

**1823.570 Drug- and alcohol-free workforce.**

**1823.570-1 Scope.**

Sections 1823.570 through 1823.570-4 set forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

**1823.570-2 Definitions.**

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570-4 and the clause at 1852.223-74.

*Employee in a sensitive position* means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated "mission critical" pursuant to the clause at 1852.246-70. The term also includes any applicant who is interviewed for a position described in this paragraph.

*Use, in violation of applicable law or Federal regulation, of alcohol* includes having, while on duty or during a pre-employment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

**1823.570-3 Contract clause.**

The contracting officer shall insert the clause at 1852.223-74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts containing the clause at 1852.246-70, "Mission Critical Space Systems Personnel Reliability Program," and in other solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

**1823.570-4 Suspension of payments, termination of contract, and debarment and suspension actions.**

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223-74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223-74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

**Subpart 1823.70—Safety and Health**

**1823.7001 NASA solicitation provisions and contract clauses.**

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts for—

(1) Negotiated acquisitions of \$1,000,000 or more;

(2) Construction, repair, or alteration in excess of the simplified acquisition threshold;

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

(4) Acquisitions regardless of dollar amount when—

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

(ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded— (1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; or

(2) When the contracting officer, with the concurrence of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70. This clause may be modified to identify specific information that is to be included

**1823.7101**

in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(d) The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

[65 FR 37059, June 13, 2000]

**Subpart 1823.71—Frequency Authorization**

**1823.7101 Contract clause.**

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

**1823.7102 Procedures.**

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

**PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**Subpart 1824.1—Protection of Individual Privacy**

Sec.  
1824.102 General.

**Subpart 1824.2—Freedom of Information Act**

1824.203 Policy.

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

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

**48 CFR Ch. 18 (10-1-00 Edition)**

**Subpart 1824.1—Protection of Individual Privacy**

**1824.102 General.**

(1) For NASA rules and regulations implementing the Privacy Act, see Privacy—NASA Regulations, (14 CFR 1212). The Act applies to any contractor maintaining a system of records to accomplish a NASA mission.

(2) Systems of records to which the Privacy Act does not apply include—

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

(A) Are maintained under contracts with educational institutions to provide training;

(B) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(C) Are similar to those maintained on other students; and

(D) Are commingled with their records on other students.

**Subpart 1824.2—Freedom of Information Act**

**1824.203 Policy. (NASA supplements paragraphs (a) and (b))**

(a) For NASA implementation of the Freedom of Information Act, see Availability of Agency Records to Members of the Public (14 CFR part 1206).

(b) When receiving any Freedom of Information Act request from the public, the contracting officer shall immediately refer the request to the Freedom of Information Act Officer, NASA Information Center, or other responsible point of contact as set forth in installation procedures.

[61 FR 55758, Oct. 29, 1996. Redesignated at 62 FR 36713, July 9, 1997]

**PART 1825 FOREIGN ACQUISITION**

Sec.  
1825.003 Definitions.  
1825.003-70 NASA definitions.

**National Aeronautics and Space Administration**

**1825.901**

**Subpart 1825.1 Buy American Act—  
Supplies**

1825.103 Exceptions.

**Subpart 1825.4 Trade Agreements**

1825.400 Scope of subpart.

**Subpart 1825.9 Customs and Duties**

1825.901 Policy.

1825.903 Exempted supplies.

**Subpart 1825.10 Additional Foreign  
Acquisition Regulations**

1825.1001 Waiver of right to examination of records.

1825.1002 Use of foreign currency.

**Subpart 1825.11 Solicitation Provisions and  
Contract Clauses**

1825.1101 Acquisition of supplies.

1825.1103 Other provisions and clauses.

1825.1103-70 Export control.

**Subpart 1825.70 Foreign Contract and  
International Agreement Clearances**

1825.7000 Scope of subpart.

1825.7001 Definition.

1825.7002 Foreign Contracts.

1825.7003 International Agreements.

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

SOURCE: 65 FR 10031, Feb. 25, 2000, unless otherwise noted.

**1825.003 Definitions.**

**1825.003-70 NASA definitions.**

“Canadian end product”, for an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.003 applies.

**Subpart 1825.1— Buy American  
Act—Supplies**

**1825.103 Exceptions.**

(a)(i) The procurement officer must send proposed public interest determinations to the Associate Administrator for Procurement (Code HS) for approval.

(ii) The Associate Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.003-70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

**Subpart 1825.4—Trade  
Agreements**

**1825.400 Scope of subpart.**

(b) The Buy American Act and the Balance of Payments Program apply to all acquisitions of Japanese end products or services in excess of \$2,500.

**Subpart 1825.9—Customs and  
Duties**

**1825.901 Policy.**

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR part 1217.

**1825.903 Exempted supplies.**

(a) Through delegation from the Associate Administrator for Procurement, procurement officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c) (<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file Customs Form 7501, Entry Summary. This form is available from Service Ports (<http://www.customs.ustreas.gov/location/ports/index.htm>) or from NASA Headquarters' forms library ([https://extranet.hq.nasa.gov/nef/user/form\\_search.cfm](https://extranet.hq.nasa.gov/nef/user/form_search.cfm)). All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

[65 FR 45306, July 21, 2000]

### Subpart 1825.10—Additional Foreign Acquisition Regulations

**1825.1001 Waiver of right to examination of records.**

(b) The Administrator is the approval authority for waivers. The contracting officer must submit the waiver request, consisting of the determination and findings prescribed in FAR 25.1001(b) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

**1825.1002 Use of foreign currency.**

(a) The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

### Subpart 1825.11—Solicitation Provisions and Contract Clauses

**1825.1101 Acquisition of supplies.**

(e) The contracting officer must add paragraph (k) as set forth in 1852.225-8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR subpart 25.9 and 1825.903.

**1825.1103 Other provisions and clauses.****1825.1103-70 Export control.**

(a) Background. (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii))

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225-70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to

the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) Contract clause. Insert the clause at 1852.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

### Subpart 1825.70—Foreign Contract and International Agreement Clearances

#### 1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for pre-award clearance of foreign contracts, and for coordination of international agreements that contemplate award of contracts using appropriated funds.

#### 1825.7001 Definition.

*Foreign contract acquisition*, as used in this subpart, means the acquisition by negotiation of supplies or services, including construction and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico; or

(b) Contracts with the Canadian Commercial Corporation.

#### 1825.7002 Foreign contracts.

(a) *Policy*. Following the procedure in paragraph (b) of this section, the Acquisition Team must coordinate with Headquarters before initiating any foreign contract acquisition if the acquisition is valued above \$100,000 or involves export control issues. An acquisition involves export control issues if it entails—

(1) Importing or exporting goods or technical data from or to a country listed in 22 CFR 126.1(a) or 126.1(d) (Subchapter M, the International Traffic in Arms Regulations) (<http://www.pmdtc.org/itar2.htm>);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR part 121 which would require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR part 774 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR part 740, Supplement 1, Country Group D; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) *Procedure*. (1) The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in paragraph (a) of this section must submit the following information to the Headquarters Office of External Relations (Code I) through the contracting officer and the Headquarters Office of Procurement (Code HS)—

(i) The name of the foreign entity, the country or countries involved, and the purpose of the contract;

(ii) The Space Act agreement(s) involved, if any;

(iii) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and

(iv) The reason why the acquisition is being placed with a foreign entity.

(2) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through the Headquarters Office of External Relations (Code I).

(3) The lead-time for obtaining an export license is 60 to 90 days. Requests

**1825.7003**

for Headquarters clearance should be initiated as early as possible.

**1825.7003 International agreements.**

Office of Procurement (Code HS) concurrence is required for all Memoranda of Understanding with foreign entities

**48 CFR Ch. 18 (10-1-00 Edition)**

and for other types of international agreements which contemplate the procurement of goods or services using U.S. appropriated funds. No Code H concurrence is required for agreements which are done solely on a cooperative basis.