

## National Aeronautics and Space Admin.

## § 1274.102

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### APPENDIX TO PART 1274—LISTING OF EXHIBITS

AUTHORITY: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

SOURCE: 67 FR 45790, July 10, 2002, unless otherwise noted.

### Subpart 1274.1—General

#### § 1274.101 Purpose.

The following policy guidelines establish uniform requirements for

NASA cooperative agreements awarded to commercial firms.

#### § 1274.102 Scope.

(a) The business relationship between NASA and the recipient of a cooperative agreement differs from the relationship that exists between NASA and the recipient of a grant. Under the auspices of a grant, there is very little involvement and interaction between NASA and the grantee (other than a few administrative, funding, and reporting requirements, or in some cases matching of funds). Under a cooperative agreement, because of its substantial involvement, NASA assumes a higher degree of responsibility for the technical performance outcomes and associated financial costs of research activities. In some cooperative agreement projects, NASA may be required to indemnify the recipient (to the extent authorized by Congress). While the principal purpose of NASA's involvement and commitment of resources is to stimulate or support research activity, a major incentive for involvement by commercial firms (particularly where costs are shared) is the profit potential from marketable products expected to result from the cooperative agreement project.

(b) Cooperative agreements (in areas or research relevant to NASA's mission) are ordinarily entered into with commercial firms to—

(1) Support research and development;

(2) Provide technology transfer from the Government to the recipient; or

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(c) Projects that normally result in a cooperative agreement award to a commercial entity are projects that:

(1) Are not intended for the direct benefit of NASA;

(2) Are expected to benefit the general public;

(3) Require substantial cost sharing; and

(4) Have commercial applications and profit generating potential.

(d) The principal purpose of cooperative agreements is to stimulate research to benefit the general public

through the criteria stated in paragraphs (a) through (c) of this section. Since all research activities must be within NASA's authorized expenditure of appropriations, there may be instances where NASA can derive incidental use or benefits while preserving the principal purpose of the cooperative agreement. However, a careful balance must be established and maintained in the cooperative agreement's technical and business objectives, so that the principal purpose of the project serves to benefit the general public (i.e., technology will transfer from the Government to the public and the commercial partner expects a marketable product to result). If a cooperative agreement is awarded when the proper award instrument should have been a contract (because the primary purpose of the award is for the direct benefit of NASA), the cooperative agreement award can be protested. Thus, before pursuing any incidental benefits that materialize under a cooperative agreement, NASA Centers should ensure that the advice of legal counsel is obtained.

#### § 1274.103 Definitions.

*Administrator.* The Administrator or Deputy Administrator of NASA.

*Agreement officer.* A Government employee (usually a Contracting Officer or Grant Officer) who has been delegated the authority to negotiate, award, or administer the cooperative agreement. Most often Contracting Officers are delegated this authority for the more complex cooperative agreement projects.

*Assistant Administrator for Procurement.* The head of the Office of Procurement, NASA Headquarters (Code H).

*Cash contributions.* The cash invested in a given program or project by the Federal Government and/or recipient. The recipient's cash contributions may include money contributed by third parties.

*Closeout.* The process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

*Commercial item.* The definition in FAR 2.101 is applicable.

*Consortium.* A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms that normally compete for commercial or Government business or may be made up of firms that perform complementary functions in a given industry.

*Cooperative agreement.* As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This Part 1274 covers only cooperative agreements with commercial firms where resource sharing is involved. Cooperative agreements with other types of organizations are covered by 14 CFR Part 1260.

*Cooperative agreement notice (CAN).* Publication on Federal Business Opportunities (FedBizOpps) or NASA Acquisition Internet Service (NAIS) websites advertising the solicitation of competitive proposals for the award of a cooperative agreement.

*Cost sharing.* Arrangement whereby the Government and the recipient share the funding requirements of a program or project at an agreed upon ratio or percentage (normally 50/50). Normally, the Government's payment of its share of the costs is contingent upon the accomplishment of tangible milestones (preferred method). Any payment arrangement that is based on a method other than the accomplishment of tangible milestones (e.g., a reimbursable arrangement where NASA pays a share of incurred costs, regardless of the accomplishment of tangible milestones) must be approved through the deviation process discussed in 1274.106.

*Date of completion.* The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

*Days.* Calendar days, unless otherwise indicated.