



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

PN 97-51  
August 1, 2000

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## CONTRACT BUNDLING

**PURPOSE:** To provide guidance on procedures for justifying contract bundling.

**BACKGROUND:** The FAR 7.107 contract bundling requirements overlap the NFS 1819.202-170 coverage on contract consolidations. To conform the NFS to the FAR, NFS 1819.202-170 is deleted, and new sections 1807.107 and 1807.107-70 are added to establish the following procedures:

- (1) The justification and documentation mandated by FAR 7.107(e) for "substantial bundling" must be performed for proposed bundlings of \$5 million or more;
- (2) The measurable benefit analysis, justification, and the bundling documentation for each acquisition of \$5 million or more must be sent to Headquarters for review;
- (3) The bundling analysis, justification, and documentation requirements apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contract, or other indefinite-delivery contract if the requirements consolidated under the order meet the definition of "bundling" at FAR 2.101; and
- (4) Master Buy Plan submissions must indicate if a listed item is a bundled acquisition.

**REGULATION:** Changes are made in Parts 1807 and 1819 as set forth in the enclosed replacement pages.

**REPLACEMENT PAGES:** You may use the enclosed pages to replace Part 1807, 19:1, 19:2, 19:3, 19:4, 19:5, and 19:6.

**REGULATORY COMPLIANCE:** This PN was published as a final rule in the Federal Register (65 FR 46875-46877, August 1, 2000).

***EFFECTIVE DATE:*** This PN is effective as dated, and shall remain in effect until canceled or superseded.

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Enclosures

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**PART 1807  
ACQUISITION PLANNING**

**TABLE OF CONTENTS**

**SUBPART 1807.1 ACQUISITION PLANS**

1807.103 Agency-head responsibilities.

1807.104 General procedures.

1807.105 Contents of written acquisition plans.

1807.107 Additional requirements for acquisitions involving bundling of contract requirements.

1807.107-70 Orders against Federal Supply Schedule contracts, Governmentwide acquisition contracts (GWACs), or other existing indefinite-delivery contracts.

1807.170 Acquisition Strategy Meeting (ASM).

**SUBPART 1807.2 PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES**

1807.204 Responsibilities of contracting officers.

**SUBPART 1807.3 CONTRACTOR VERSUS GOVERNMENT PERFORMANCE**

1807.307 Appeals.

## **SUBPART 1807.5 INHERENTLY GOVERNMENTAL FUNCTIONS**

1807.503 Policy.

## **SUBPART 1807.70 CONSOLIDATED CONTRACTING**

1870.7000 General.

## **SUBPART 1807.71 MASTER BUY PLAN**

1807.7100 General.

1807.7101 Applicability.

1807.7102 Submission, selection, and notification procedures.

1807.7102-1 Submission of Master Buy Plan.

1807.7102-2 Submission of amendments to the Master Buy Plan.

1807.7102-3 Selection and notification procedures.

1807.7103 Format of Master Buy Plan.

## **SUBPART 1807.72 ACQUISITION FORECASTING**

1807.7200 Scope of subpart.

1807.7201 Definitions.

1807.7202 Policy.

1807.7203 Responsibilities.

1807.7204 Forecast data.

1807.7205 Public availability.

## **PART 1807 ACQUISITION PLANNING**

### **Subpart 1807.1 - Acquisition Plans**

### **1807.103 Agency-head responsibilities.**

(d)(i) Except as provided in paragraph (d)(iii) of this section, acquisition plans shall be prepared according to the following:

(A) For acquisitions requiring Headquarters approval, by an Acquisition Strategy Meeting (ASM) (see 1807.170);

(B) For acquisitions not requiring Headquarters approval and expected to exceed \$5 million, by installation-approved ASMs or written acquisition plans; and,

(C) For acquisitions not expected to exceed \$5 million, in accordance with installation procedures.

(ii) The estimated dollar amounts shall include all options and later phases of the same program or project.

(iii) Acquisition plans are not required for the following acquisitions:

(A) Architect-engineering services;

(B) Broad agency announcements (see 1835.016) or unsolicited proposals;

(C) Basic research from nonprofit organizations;

(D) Utility services available from only one source;

(E) From or through other Government agencies except when the value of the acquisition meets the Master Buy Plan threshold (see 1807.7101(a));

(F) Industrial facilities required in support of related contracts; or

(G) MidRange procedure awards (see 1871). However, acquisition plans are required for commercial item acquisitions that exceed the MidRange dollar thresholds for noncommercial items.

(iv) Acquisition plans shall be approved before soliciting proposals.

(v) Approval of an acquisition plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. All required deviations shall be approved through the procedures described in FAR 1.4 and 1801.4.

(vi) A single acquisition plan may be used for all phases of a phased acquisition provided the plan fully addresses each phase, and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes

do occur, the plan shall be amended and approved at the same level as the original plan.

(e) Acquisition plans should be prepared on a program or system basis when practical. In such cases, the plan should fully address all component acquisitions of the program or system.

#### **1807.104 General procedures.**

(a) The acquisition planning team shall obtain input from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, and security concerns. (See NPG 8715.3, NASA Safety Manual; NPG 7120.5, NASA Program and Project Management Processes and Requirements; NPG 2810.1, Security of Information Technology, and NPG 1620.1, Security Procedures and Guidelines, all available at [www.nodis.hq.nasa.gov](http://www.nodis.hq.nasa.gov)).

#### **1807.105 Contents of written acquisition plans.**

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR. Subheadings should be used when appropriate (e.g., the separate items under contracting considerations at 7.105(b)(4)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A. The requirements in FAR 7.105 regarding performance-based contracting methods shall not be limited to acquisition plans for service contracts.

(a)(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities.

(a)(2) NPG 7120.5 shall be an integral part of acquisition planning for programs and projects subject to its requirements. If the NPG does not apply, the acquisition plan shall clearly state that fact. If the NPG does apply, specify whether all required NPG 7120.5 documentation is current and approved (see 1804.7301(b)(2)(i)). If not, describe the approach for obtaining approval or the authority to proceed without approval before release of draft or final solicitations. For programs and projects under the NPG, all draft or final solicitations subject to, or directly or substantially in support of, those programs or projects shall clearly identify the program or project of which they are part.

(a)(3) Identify the estimated cost and describe the estimating methodology.

(a)(5) Specify the delivery or performance period requirements separately by the basic contract, each option, and the total.

(a)(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project Management Processes and Requirements). In addition to technical, schedule, and cost risks, the discussion shall include such considerations as: safety and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPG 2190, NASA Export Control Program); and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (e.g., high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

(a)(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b)(1) If the acquisition represents a consolidation of efforts previously contracted for separately, address the reasons for the consolidation, the expected benefits, and any potential adverse impact (including the effect on small, small disadvantaged, and women-owned small business participation) and planned actions to mitigate the impact (see 1819.202-170).

(b)(3) Address how cost realism will be evaluated.

(b)(4)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects.

(B) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR part 19 and part 1819).

(b)(5)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by fiscal year and unique project number (UPN).

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(b)(6) Identify the type of work statement/specification planned. Specifically address the applicability of performance-based requirement descriptions and the availability of commercial sources for the supplies/services.

(b)(10) Address contract management issues, including planned delegations of administrative functions.

(b)(20) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal SEB competitions), explain why that goal cannot be met.

**1807.107 Additional requirements for acquisitions involving bundling of contract requirements.**

(c) Requests for approval of proposed bundlings that do not meet the thresholds in FAR 7.107(b) must be sent to the Headquarters Office of Procurement (Code HS).

(e) The substantial bundling documentation requirement applies to each proposed NASA bundling expected to exceed \$5 million or more. The contracting officer must forward the documentation along with the measurable benefits analysis required by FAR 7.107(b) to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 10 days for review.

**1807.107-70 Orders against Federal Supply Schedule contracts, Governmentwide acquisition contracts (GWACs), or other existing indefinite-delivery contracts.**

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contract, or other indefinite-delivery contract if the requirements consolidated under the order meet the definition of "bundling" at FAR 2.101.

**1807.170 Acquisition Strategy Meeting (ASM).**

(a) The ASM is an acquisition plan conducted through a meeting attended by all interested NASA offices. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decisions, actions, and conclusions of the ASM members. The approved minutes, along with the briefing charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The ASM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Headquarters ASMs will be chaired by the Associate Administrator for Procurement or designee. The Headquarters Office of Procurement (Code HS) will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For field installation ASMs, the minutes shall be approved in accordance with installation procedures

### **Subpart 1807.2--Planning for the Purchase of Supplies in Economic Quantities**

#### **1807.204 Responsibilities of contracting officers.**

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for a significant savings, it should be transmitted immediately.

### **Subpart 1807.3--Contractor Versus Government Performance**

#### **1807.307 Appeals.**

(a) Installations shall establish appeals procedures in accordance with NMI 7410.3, Delegation of Authority for Acquisition of Commercial Activities for NASA's Use.

### **Subpart 1807.5--Inherently Governmental Functions**

#### **1807.503 Policy.**

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.

### **Subpart 1807.70--Consolidated Contracting**

#### **1807.7000 General.**

The Consolidated Contracting Initiative (CCI) is NASA's commitment to the cooperative creation and utilization of contracts, whenever practicable, to meet common Agency needs. CCI aims at improving acquisition efficiency by identifying



and logically combining similar requirements. Complete information on the initiative, with its implementation guidance, is available in the internet (<http://procurement.nasa.gov/cgi-bin/CCI/first.cgi>).

## **Subpart 1807.71--Master Buy Plan**

### **1807.7100 General.**

The Master Buy Plan provides information on planned acquisitions to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive acquisitions.

### **1807.7101 Applicability.**

(a) The Master Buy Plan applies to each negotiated acquisition, including supplemental agreements and acquisitions through or from other Government agencies, where the dollar value, including the aggregate amount of options, follow-on acquisitions, or later phases of multi-phase acquisitions, is expected to equal or exceed \$50,000,000.

(b) For initial annual Master Buy Plan submission only, each installation shall submit its three largest acquisitions regardless of dollar value and all acquisitions over \$50,000,000.

(c) The procedure also applies to:

(1) Any supplemental agreement that contains either new work, a debit change order, or a credit change order (or any combination/ consolidation thereof), if the absolute value of the actions equals or exceeds \$50,000,000 (e.g., the absolute value of a supplemental agreement adding \$30,000,000 of new work and deleting \$30,000,000 of work is \$60,000,000, and is therefore subject to the Master Buy Plan).

(2) Any supplement agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan, even though the value does not equal or exceed \$50,000,000.

(3) Any cooperative agreement notice where the total value (the Government's contribution plus the contribution of the recipient) of any resulting cooperative agreement is expected to equal or exceed \$50,000,000.

(4) Any acquisition designated by NASA Headquarters regardless of its value.

(d) The Master Buy Plan does not apply to incremental funding actions or termination settlement agreements.

## **1807.7102 Submission, selection, and notification procedures.**

### **1807.7102-1 Submission of Master Buy Plan.**

(a) Prior to July 15th of every year, each installation shall submit to the Headquarters Office of Procurement (Code HS) a Master Buy Plan (electronically or original and eight copies) for the next fiscal year, listing every known acquisition that (1) meets the criteria in 1807.7101, (2) is expected to be initiated in that fiscal year, and (3) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list all uncompleted acquisitions selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans. These acquisitions should be listed by the appropriate fiscal year Master Buy Plan and individual item numbers, and should indicate the current status of the individual acquisition documents previously selected for Headquarters review and approval.

(c) Plans shall be prepared in accordance with 1807.7103 and shall identify the individual acquisition documents involved for every acquisition listed. Acquisition documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7102-3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

### **1807.7102-2 Submission of amendments to the Master Buy Plan.**

(a) Acquisitions identified by installations after submission of their Master Buy Plan and meeting the criteria in 1807.7102-1(a) shall be submitted to Headquarters in accordance with 1807.7103 and identified as an amendment to the fiscal year Master Buy Plan submission.

(b) Master Buy Plan submissions should not be accomplished after the fact. Amendments shall be submitted sufficiently in advance of contract award date to allow Headquarters to select those acquisition documents that will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement.

(c) When timely submittal is not possible, the installation shall provide with the amendment a narrative explaining the circumstances leading to the late submittal. A Master Buy Plan submission for a contract change order expected to meet the criteria in 1807.7101 shall be submitted to Headquarters immediately upon issuance of the change order.

### **1807.7102-3 Selection and notification procedures.**

(a) The Headquarters Office of Procurement (Code HS) shall select acquisition documents from the Master Buy Plan and amendments to Master Buy Plans to receive Headquarters review and approval and shall designate source selection officials.

(b) When, subsequent to document selection or delegation, an acquisition is changed (for example, increase or decrease in dollar amount, change in requirement), canceled, superseded, deferred, or becomes no longer subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7101, the installation shall immediately notify Code HS, giving the reasons. Code HS shall notify the installation's procurement office in writing of any further action that may be required.

(c) Acquisition documents not selected for Headquarters review will be subject to after-the-fact reviews by Headquarters during normal procurement management surveys or other special reviews. Acquisition delegations may subsequently be rescinded if a Headquarters review is deemed appropriate.

### **1807.7103 Format of Master Buy Plan.**

In accordance with the requirements of 1807.7102-1 and 1807.7102-2, Master Buy Plans and amendments to Master Buy Plans shall be prepared in accordance with the format illustrated in Table 1807-1.

## **Subpart 1807.72--Acquisition Forecasting**

### **1807.7200 Scope of subpart.**

This subpart prescribes the acquisition forecasting procedure required to comply with the Business Opportunity Development Reform Act of 1988.

### **1807.7201 Definitions.**

**"Class of contracts"** means a grouping of acquisitions, either by dollar value or by the nature of supplies and services to be acquired.

**"Contract opportunity"** means planned new contract awards exceeding \$25,000.

### **1807.7202 Policy.**

As required by statute, it is NASA policy to (a) prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year; (b) include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and (c) make available such forecasts to the public.

### **1807.7203 Responsibilities.**

(a) NASA Procurement Officers shall post the data required by 1807.7204 directly to the NASA Acquisition Internet Service not later than October 1 for the annual forecast and April 15 for the semiannual update.

(b) Code HS will manage policy and monitor compliance with the NASA Acquisition Forecast process.

### **1807.7204 Forecast data.**

(a) The annual forecast shall contain--

(1) Summary historical data (based on information provided by the Headquarters Office of Procurement (Codes HC and HS)) on the class of contract opportunities below the simplified acquisition threshold;

(2) Identification of all known contract opportunities in excess of the simplified acquisition threshold. Each such action should be identified as one of the three broad categories of acquisition -- Research and Development, Services, or Supplies and Equipment and shall include the following information:

(i) A brief description not to exceed ten typed lines;

(ii) Approximate dollar value within the following dollar ranges: \$100,000 to \$1,000,000; \$1,000,000 to \$5,000,000; and over \$5,000,000;

(iii) Anticipated time (by fiscal year quarter) for the issuance of the solicitation;

(iv) Identification if it is reserved for performance by small business concerns including those owned and controlled by socially and economically disadvantaged individuals;

(v) Identification as competitive or noncompetitive; and

(vi) Identification and telephone number of a center point of contact.

(b) The semiannual report shall be an update of the data provided by the annual forecast. This update should provide information on new requirements not previously reported and on changes in data related to actions previously identified.

### **1807.7205 Public availability.**

The annual forecast and semiannual update are available on the NASA Acquisition Internet Service (<http://www.hq.nasa.gov/office/procurement/>).

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**FORMAT**

**MASTER BUY PLAN PROCEDURES**

**Line Item No:** \_\_\_\_\_ **FY** \_\_\_\_\_ **Page No.:** \_\_\_\_\_

**Installation:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(1)	(2)	(3)	(4)	(5)	(6)
Cognizant Headquarters Office	Descriptive Title of Procurement	Estimated Dollar Value	Acquisition Plan	JOFOC	RFP
(7)	(8)	(9)	(10)	(11)	
SEB	Pre-Neg	Contract Review	Current Status	Remarks	

**INSTRUCTIONS**

**General**

1. Prepare on 8-1/2" x 11" paper or electronically.
2. List only one procurement on each page and number each page. Sequentially number each procurement action with a two digit "Line Item Number" beginning with "01" for each annual submission and subsequent amendments.

3. For the initial submission only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.
4. Do not reproduce these instructions on the submission.

### **Supplementary instructions by heading number**

- (1) Include letter code and Headquarters contact, if known.
- (2) Include an "N" to indicate new procurement or "FO" to indicate follow-on procurement.
- (3) A range of dollar values may be used, if the exact value is unavailable. Express the range as \$120M to \$25M, \$25M to \$50M, and so forth in \$25M increments. Include all phases of the procurement. All dollar values must be in real year dollars, i.e., adjusted to include anticipated inflation.
- (4) Installation recommendation ("Y" or "N") that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission.)
- (5)-(9) Use "X" to indicate applicable documents. If column (7) contains an "X", include your recommendation in that column for the Source Selection Official (SSO). The recommendation should be either the Center SSO or Headquarters SSO (HSSO).
- (10) Status should include scheduled date for next event. (Complete horizontally.)
- (11) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the names and telephone numbers of the cognizant installation procurement person and technical representative. Indicate if the procurement will result in a bundled contract as defined in FAR 2.101.

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## **PART 1819 SMALL BUSINESS PROGRAMS**

### **TABLE OF CONTENTS**

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-PROTÉGÉ 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-Protégé 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 Protégé firms.

1819.7210 Selection of protégé 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.

## **PART 1819 SMALL BUSINESS PROGRAMS**

### **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.**

(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 section 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 nonresponsiveness 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 official 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.

### **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.**

(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 acquisitions, 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 nonconcurrence 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.**

(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.**

(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**