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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1806, 1819, and 1852

#### NASA Mentor-Protégé Program

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule amending the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to eliminate the pilot status of the NASA Mentor-Protégé Program and make it consistent with recent FAR changes on evaluation of small disadvantaged business (SDB) participation in acquisitions. Miscellaneous editorial revisions are also made to the Mentor-Protégé coverage. In addition, the rule makes an internal administrative change to redesignate the competition advocate for NASA Headquarters acquisitions.

**DATES:** This rule is effective March 5, 1999.

**ADDRESSES:** Tom O'Toole, Code HK, NASA Headquarters, 300 E Street, SW, Washington, DC 20456-0001.

**FOR FURTHER INFORMATION CONTACT:** Tom O'Toole, (202) 358-0478, e-mail: thomas.otoole@hq.nasa.gov.

#### SUPPLEMENTARY INFORMATION:

#### Background

The NASA Mentor-Protégé Program was established as a pilot program in March 1995 to incentivize NASA prime contractors to provide developmental assistance to SDB concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns. The pilot program has proved successful, and the program will continue indefinitely. However, the FAR has recently been revised to specify the circumstances in which SDB participation may be evaluated in Government acquisitions. Only those SDBs in Standard Industrial Classification Major Groups as determined by the Department of Commerce may be included in the evaluation. The NASA Mentor-Protégé Program addresses evaluation of SDBs, and changes are required to ensure conformance with the FAR.

#### Impact

##### Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning

of FAR 1.501 and Pub. L. 98-577, and publication for comments is not required. However, comments from small entities concerning the affected NFS coverage will be considered in accordance with 5 U.S.C. 610. Such comments may be submitted separately and should cite 5 U.S.C. 601, *et seq.*

#### Paperwork Reduction Act

The Paperwork reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 1806, 1819, and 1852

Government procurement.

**Tom Luedtke,**

*Acting Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1806, 1819, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1806, 1819, and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

#### PART 1806—COMPETITION REQUIREMENTS

2. In section 1806.501, paragraph (3) is revised to read as follows:

##### 1806.501 Requirement.

\* \* \* \* \*

(3) The Headquarters Chief Financial Officer, Code CF, is the competition advocate for the Headquarters contracting activity.

\* \* \* \* \*

#### PART 1819—SMALL BUSINESS PROGRAMS

3. Section 1819.7201 is revised to read as follows:

##### § 1819.7201 Scope of subpart.

The NASA Mentor-Protégé 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.

4. In section 1819.7205, paragraphs (c) and (d) are removed, and paragraph (b) is revised to read as follows:

##### § 1819.7205 General policy.

\* \* \* \* \*

(b) The Mentor-Protégé 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-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-Protégé efforts shall be evaluated under the award fee evaluations.

5. Section 1819.7206 is revised to read as follows:

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

(a) Proposed mentor-protégé efforts, except for the extent of participation of protégés as subcontractors, shall be evaluated under the Mission Suitability factor as a subfactor or element. The participation of SDB protégés 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 protégés 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).

6. In section 1819.7209, paragraphs (a)(1) and (b) are revised to read as follows:

##### § 1819.7209 Protégé firms.

(a) \* \* \*

(1) An SDB in the SIC Major Groups as determined by the Department of

Commerce (see FAR 19.201(b)), HBCU, MI, or WOSB;

\* \* \* \* \*

(b) Except for SDBs, a protégé 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 protégés that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

\* \* \* \* \*

7. In section 1819.7210, paragraph (d) is removed and paragraph (c) is revised to read as follows:

**§ 1819.7210 Selection of protégé firms.**

\* \* \* \* \*

(c) The selection of protégé 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 protégé. 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.

8. In section 1819.7214, paragraph (i) is removed and paragraphs (e), (g), and (h) are revised to read as follows:

**§ 1819.7214 Developmental assistance.**

\* \* \* \* \*

(e) Advance payments. While a mentor can make advance payments to its protégés 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;

\* \* \* \* \*

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

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

9. In section 1819.7215, paragraph (b) is revised to read as follows:

**§ 1819.7215 Obligation.**

\* \* \* \* \*

(b) Mentor and protégé firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of each NASA contract subject to the approved Mentor-Protégé agreement.

10. In section 1819.7216, paragraphs (a)(2), (a)(3), and (b) are revised to read as follows:

**§ 1819.7216 Internal controls.**

(a) \* \* \*

(2) Reviewing any semi-annual progress reports submitted by mentors and protégés on protégé development to

measure protégé progress against the master plan contained in the approved agreement.

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

(b) NASA may terminate mentor-protégé agreements for good cause and exclude mentor or protégé 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 protégé. 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).

11. In section 1819.7217, paragraph (c) is revised to read as follows:

**§ 1819.7217 Reports.**

\* \* \* \* \*

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

\* \* \* \* \*

12. In section 1819.7219, paragraph (a) is revised to read as follows:

**§ 1819.7219 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at 1852.219-77, NASA Mentor-Protégé 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.

\* \* \* \* \*

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

13. In the clause to section 1852.219-77, paragraphs (a), (b) introductory text, and (b)(4) are revised to read as follows:

**1852.219-77 NASA Mentor-Protégé program.**

\* \* \* \* \*

**NASA Mentor-Protégé Program (March 1999)**

(a) Prime contractors, including certain small businesses, are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

\* \* \* \* \*

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

\* \* \* \* \*

14. In the clause to section 1852.219-79, paragraphs (b) introductory text, (e), and (f) are revised to read as follows:

**1852.219-79 Mentor requirements and evaluation.**

\* \* \* \* \*

**Mentor Requirements and Evaluation (March 1999)**

\* \* \* \* \*

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

\* \* \* \* \*

(e) Mentor and protégé firms will submit a "lessons learned" evaluation to the NASA OSDBU at the conclusion of the contract. At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments as pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause and exclude mentor or protégé 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 protégé. 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).

(End of clause)

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