

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Parts 1910 and 1915

[Docket No. OSHA-S049-2006-0675 (formerly OSHA Docket No. S-049)]

RIN 1218-AB50

#### General Working Conditions in Shipyard Employment; Notice of Informal Public Hearing

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rule; notice of informal public hearings.

**SUMMARY:** OSHA is announcing that the informal public hearing on the proposed rule on general working conditions in shipyard employment in Seattle, WA, will be held at the Renaissance Seattle Hotel.

**DATES:** OSHA will hold an informal public hearing in Seattle, WA, beginning at 9:30 a.m., October 21-22, 2008. If necessary, the hearing will continue on subsequent days at the same time and location.

**ADDRESSES:** The hearing will be held at the Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.

**Docket:** To read or download background documents as well as comments and materials submitted in response to the proposed rule or at the informal public hearing in Washington, DC, go to Docket No. OSHA-S049-2006-0675 at <http://www.regulations.gov>, which is the Federal eRulemaking Portal.

All materials and submissions in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web page. All materials and submissions are available for public inspection and copying at the OSHA Docket Office, Room N-2625, U.S. Department of

Labor, 200 Constitution Avenue, NW., Washington, DC; telephone (202) 693-2350. For information on reading or downloading materials in the docket and obtaining materials not available through the Web page, please contact the OSHA Docket Office during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

Electronic copies of this **Federal Register** notice and the proposed rule are available at <http://www.regulations.gov>. This notice, the proposed rule, news releases, and other relevant information also are available at OSHA's Web page at <http://www.osha.gov>.

#### FOR FURTHER INFORMATION CONTACT:

**Press inquiries:** Jennifer Ashley, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

**Technical information:** Joseph Daddura, Director, Office of Maritime within the Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2086.

**Hearings:** Ms. Veneta Chatmon, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999; e-mail [chatmon.veneta@dol.gov](mailto:chatmon.veneta@dol.gov).

#### SUPPLEMENTARY INFORMATION:

OSHA will hold an informal public hearing on the proposed rule on general working conditions in shipyard employment on October 21-22, 2008, at the Renaissance Seattle Hotel, Seattle, WA. If necessary, the hearing will continue on subsequent days at the same time and location.

On December 20, 2007, OSHA published a proposed rule to update and revise the standards on general working conditions in shipyard employment (72 FR 72451). OSHA invited written comments and requests for hearings on the proposed rule. The deadline for submitting comments and hearing requests was March 19, 2008. OSHA received several hearing requests and published a **Federal Register** notice scheduling informal public hearings

beginning September 9, 2008, in Washington, DC, and October 21, 2008, in Seattle, WA (73 FR 36823 (6/30/2008)). At that time, OSHA had not finalized the location of the hearing in Seattle, WA, and this notice announces that location.

Persons interested in participating at either hearing were required to file a notice of intention to appear by July 18, 2008, and, to submit advance written testimony by August 8, 2008, if they were requesting to testify for longer than 10 minutes. They do not need to resubmit. OSHA is not accepting additional requests to participate at the hearing in Seattle, WA.

OSHA emphasizes that hearings on proposed rules are open to the public; however, only individuals who have filed a timely notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the administrative law judge presiding at the hearing, an individual who did not file a notice of intention to appear may be allowed to a present brief oral statement not exceeding 10 minutes at the end of the hearing.

#### Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 5-2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC on this 15th day of September 2008.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8-21931 Filed 9-18-08; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1819 and 1852

RIN 2700-AD41

#### NASA Mentor-Protégé Program

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Proposed rule.

**SUMMARY:** NASA proposes to revise the NASA FAR Supplement (NFS) to update the procedures for NASA's Mentor-Protégé program. The changes will streamline the program; align the mentoring to technical skills; expand the program to include Small Disadvantaged Businesses (SDB), women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges and Universities, minority institutions of higher education, and NASA Small Business Innovation Research (SBIR) Phase II small businesses; and will include award fee incentives.

**DATES:** Comments should be submitted on or before November 18, 2008 to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700-AD41, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Diane Thompson, NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to [Diane.Thompson@nasa.gov](mailto:Diane.Thompson@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Diane Thompson, NASA, Office of Procurement, Contract Management Division; (202) 358-0514; e-mail: [Diane.Thompson@nasa.gov](mailto:Diane.Thompson@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule implements the NASA Mentor-Protégé Program established under the authority of Title 42, U.S.C., 2473(c)(1). Under the program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. This proposed rule also introduces mentor award fee incentives and explains the calculated subcontracting credit pursuant to FAR 52.219-9, Small Business Subcontracting Plan. This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because participation in the mentor protégé program is voluntary and does not impose an economic impact beyond that addressed in the FAC 2005-14 publication of the FAR final rule.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is applicable because the NFS changes impose information collection requirements in the form of applications and report submissions. The information collection has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* via control number 2007-0078.

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

Government procurement.

**William P. McNally,**

*Assistant Administrator for Procurement.*

Accordingly, 48 CFR parts 1819 and 1852 are proposed to be amended as follows:

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

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

2. Subpart 1819 is revised to read as follows:

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

- 1819.7201 Scope of subpart.
- 1819.7202 Eligibility.
- 1819.7203 Mentor approval process.
- 1819.7204 Protégé selection.
- 1819.7205 Mentor-protégé agreements.
- 1819.7206 Agreement contents.
- 1819.7207 Agreement submission and approval process.
- 1819.7208 Award Fee Pilot Program.
- 1819.7209 Credit agreements.
- 1819.7210 Agreement terminations.
- 1819.7211 Loss of Eligibility.
- 1819.7212 Reporting requirements.
- 1819.7213 Performance reviews.
- 1819.7214 Measurement of Program success
- 1819.7215 Solicitation provision and contract clauses.

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

###### 1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) established under the authority of Title 42, U.S.C., 2473(c)(1). The purpose of the Program is to:

(1) Provide incentives to NASA contractors, performing under at least one active approved subcontracting plan negotiated with NASA or another Federal agency, to assist protégés in enhancing their capabilities to satisfy NASA and other contract and subcontract requirements;

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

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

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives.

Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219-9, Small Business Subcontracting Plan.

###### 1819.7202 Eligibility.

(a) Eligibility of Mentors: To be eligible to participate as a mentor, an entity must be—

(1) A large prime contractor performing under contracts with at least one approved subcontracting plan negotiated with NASA, pursuant to FAR Subpart 19.7, The Small Business Subcontracting Program; and

(2) A contractor eligible for receipt of Government contracts.

(i) An entity may not be approved for participation in the Program as a mentor if, at the time of requesting participation in the program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) Eligibility of Protégés: To be eligible to participate as a protégé, an entity must—

(1) Be classified as a Small Disadvantaged Business (SDB), a women-owned small business, a HUBZone small business, a veteran-owned or service-disabled veteran-owned small business, an historically black college and university, minority institution of higher education, or an active NASA SBIR Phase II company, as defined in FAR Part 2, Definitions of Parts and Terms;

(2) Be eligible for the award of Federal contracts; and

(3) Be a small business according to the Small Business Administration

(SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor if the protégé is representing itself as a women-owned small business, HUBZone small business, or a veteran-owned or service-disabled veteran-owned small business.

#### **1819.7203 Mentor approval process.**

(a) An entity seeking to participate as a mentor must apply to the NASA Headquarters Office of Small Business Programs (OSBP), to establish its initial eligibility and approval as a mentor, prior to submission of a mentor-protégé agreement.

(b) The application must provide the following information:

(1) A statement that the entity is currently performing under at least one active approved subcontracting plan negotiated with NASA pursuant to FAR 19.702, The Small Business Subcontracting Program, and that the entity is currently eligible for the award of Government contracts.

(2) A summary of the entity's historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(3) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of all other Federal agency contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of subcontracts that the entity awarded under NASA contracts during the two preceding fiscal years.

(6) The total dollar amount of subcontracts that the entity awarded under all other Federal agency contracts during the two preceding fiscal years.

(7) The total dollar amount and percentage of subcontracts that the entity awarded to all SDB, women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges and Universities, and minority institutions of higher education, under NASA contracts and other Federal agency contracts during the two preceding fiscal years. If the entity is presently required to submit a Summary Subcontracting Report via the Government Electronic Subcontracting

Reporting System (eSRS), the application must include copies of the final reports for the two preceding fiscal years.

(8) Information on the entity's ability to provide developmental assistance to its eligible protégés.

(9) Any additional information as requested by NASA OSBP.

(c) In accordance with the Small Business Act, developmental assistance as described in 1819.7205(c) and provided by a mentor to its protégé pursuant to a mentor-protégé agreement may not be a basis for determining affiliation or control (either direct or indirect) between the parties.

(d) Entities that apply for participation and are not approved will be provided the reasons and an opportunity to submit additional information for reconsideration.

(e) Entities approved for participation as a mentor in the NASA program must resubmit a mentor application every six (6) years for review and approval by NASA OSBP.

(f) A template of the mentor application is available at: <http://www.osbp.nasa.gov>.

#### **1819.7204 Protégé selection.**

(a) Mentors will be solely responsible for selecting protégés. Mentors are required to identify and select concerns that are defined as either an SDB, women-owned small business, HUBZone small business, veteran-owned or service-disabled veteran-owned small business, Historically Black Colleges and Universities, minority institutions of higher education, or an active NASA SBIR Phase II company.

(b) The selection of protégés by a mentor may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or eligibility of an entity selected to be a protégé, the mentor must refer the protest to the SBA to resolve in accordance with 13 CFR Part 121 (with respect to size) or 13 CFR Part 124 (with respect to disadvantaged status).

(d) A protégé may have only one active NASA mentor-protégé agreement, and may not participate in the NASA Program more than two times as a protégé.

(e) Protégés will be required to submit a protégé application concurrently with the agreement submission. This application will include the following information:

(1) A summary of the entity's historical and recent activities, including annual revenue and number of employees.

(2) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(3) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of subcontracts that the company awarded under NASA contracts during the two preceding fiscal years.

(5) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the two preceding fiscal years.

#### **1819.7205 Mentor-protégé agreements.**

(a) The agreements shall be structured after the Mentor completes an assessment of the developmental needs of the protégé and a mutual agreement is reached regarding the developmental assistance to be permitted to address those needs and enhance the protégé's ability to perform successfully under contracts and/or subcontracts.

(b) A mentor shall not require a protégé to enter into a mentor-protégé agreement as a condition for award of a contract by the mentor, including a subcontract under a NASA contract awarded to the mentor.

(c) The mentor-protégé agreement may provide for the mentor to furnish any or all of the following types of developmental assistance:

(1) Assistance by the mentor's personnel in—

(i) General business management, including organizational management, financial management, personnel management, marketing, business development, and overall business planning;

(ii) Engineering, environmental and technical matters; and

(iii) Any other assistance designed to develop the capabilities of the protégé under the developmental program.

(2) Award of subcontracts under NASA contracts or other contracts on a noncompetitive basis.

(3) Advance payments under such subcontracts. The mentor must administer advance payments when first approved by NASA in accordance with FAR Subpart 32.4, Advance Payments for Non-Commercial Items.

(4) Loans.

(5) Investment(s) in the protégé in exchange for an ownership interest in the protégé, not to exceed 10 percent of the total ownership interest. Investments may include, but are not

limited to, cash, stock, and contributions in kind.

(6) Assistance that the mentor obtains for the protégé from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black Colleges and Universities.

(iv) Minority institutions of higher education.

(d) Developmental assistance provided under an approved mentor-protégé agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for credit under the Program.

(e) A template of the mentor-protégé agreement is available at <http://www.osbp.nasa.gov>.

#### 1819.7206 Agreement contents.

Each mentor-protégé agreement will contain the following elements:

(a) The name, address, e-mail address, and telephone number of the mentor and protégé points of contact;

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé to the mentor and a statement that, at the time the agreement is submitted for approval, the protégé, if an SDB, a women-owned small business, a HUBZone small business, or a veteran-owned or a service-disabled veteran-owned small business concern, does not exceed the size standard for the appropriate NAICS code;

(c) The DUNS number of the mentor and protégé;

(d) A statement that the mentor is eligible to participate in accordance with 1819.7202(a);

(e) A statement that the protégé is eligible to participate in accordance with 1819.7202(b);

(f) A developmental program specifying the type of assistance the mentor will provide to the protégé and how that assistance will—

(1) Increase the protégé's ability to participate in NASA, Federal, and/or commercial contracts and subcontracts; and

(2) Increase small business subcontracting opportunities in industry

categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

(g) Factors to assess the protégé's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(h) An estimate of the dollar value and type of subcontracts that the mentor will award to the protégé, and the period of time over which the subcontracts will be awarded;

(i) A statement from the mentor and protégé indicating a commitment to comply with the requirements for reporting in accordance with 1819.7212 and for review of the agreement during the duration of the agreement, and additionally for the protégé, two years thereafter;

(j) Procedures to terminate the agreement in accordance with 1819.7210;

(k) A provision that the term for the agreement will not exceed 3 years for a credit agreement;

(l) Additional terms and conditions as may be agreed upon by both parties; and

(m) Signatures and dates for both parties to the mentor-protégé agreement.

#### 1819.7207 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit to a Small Business Specialist at a NASA Center—

(1) A signed mentor-protégé agreement pursuant to 1819.7206;

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

(3) NASA OSBP may require additional information as requested upon agreement submission.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified prior to the mentor incurring costs for developmental assistance to the protégé.

#### 1819.7208 Award Fee Pilot Program.

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR Phase II Protégés only. The award fee will be assessed at the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA

contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans under the Award Fee Pilot Program.

(c) Evaluation criteria to determine the award fee would include:

(1) Active participation in the Program;

(2) The amount and quality of developmental assistance provided;

(3) Subcontracts awarded to small businesses and others;

(4) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(5) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee will also receive credit as described in 1819.7209.

#### 1819.7209 Credit Agreements.

(a) The credit permits the mentor to include the cost it expends on a mentor-protégé agreement as part of any subcontracting plan pursuant to the clause at FAR 52.219-9, Small Business Subcontracting Plan. The following provisions apply to all credit mentor-protégé agreements:

(1) Developmental assistance costs incurred by a mentor for providing assistance to a protégé pursuant to an approved credit mentor-protégé agreement may be credited as if the costs were incurred in a subcontract awarded to that protégé. Credit is given for the sole purpose of determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(2) Other costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan.

(3) The amount of credit a mentor may receive for developmental assistance costs must be reported on a one-to-one basis for all dollars spent.

#### 1819.7210 Agreement terminations.

(a) Agreements may be terminated for cause or on a voluntary basis by the mentor or the protégé. The procedures for agreement termination are outlined in the mentor-protégé agreement template available at <http://www.osbp.nasa.gov>.

(b) NASA OSBP maintains the right to terminate an agreement if milestones provided under the original agreement submission, pursuant to 1819.7206(g), are not satisfactorily achieved, or for other reasons as determined necessary by the NASA OSBP.

#### **1819.7211 Loss of Eligibility.**

(a) If the mentor is suspended or debarred while performing under an approved mentor-protégé agreement, the mentor—

(1) May not be reimbursed or take credit for any costs of providing developmental assistance to its protégé, incurred more than 30 days after the imposition of such suspension or debarment; and

(2) Must promptly give notice of its suspension or debarment to its protégé and NASA OSBP.

(b) If the protégé is suspended or debarred while performing under an approved mentor-protégé agreement or the SBA determines that a protégé is ineligible according to program eligibility requirements, then

(1) The mentor shall not be able to receive credit for any of the costs of providing assistance to the protégé after the date of the determination regarding the protégé's loss of eligibility; and

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's suspension or debarment, if participating in the Award Fee Pilot Program.

(c) If the protégé is a Historically Black College or University, or other minority institution of higher education that loses either their accredited or minority status, then:

(1) The mentor shall not be able to receive credit for any the costs of providing assistance to the protégé after the date of the determination regarding the protégé's status.

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's loss of accreditation or minority status.

#### **1819.7212 Reporting requirements.**

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually throughout the term of the agreement.

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

(c) Each semiannual report must include the following data on performance under the mentor-protégé agreement:

(1) Dollars obligated by NASA (for reimbursable agreements).

(2) Expenditures by the mentor.

(3) The number and dollar value of subcontracts awarded to the protégé.

(4) Description of developmental assistance provided, including milestones achieved.

(5) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) Semiannually, the protégé must provide an independently developed progress report using the semiannual report template, on the progress made during the prior six months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The Protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé semiannual report required by paragraph (d) of this section may be provided with the mentor semiannual report required by paragraph (a) of this section, or submitted separately.

(f) Reports for all agreements must be submitted to the NASA OSBP Mentor-Protégé Program Manager, the mentor's cognizant administrative contracting officer, and their cognizant center small business specialist.

(g) Templates for the semiannual report and the Post-Agreement report and guidance for their submission are available at: <http://www.osbp.nasa.gov>.

#### **1819.7213 Performance reviews.**

(a) NASA OSBP will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews will include verification of—

(1) All costs incurred by the mentor under the agreement to determine if they were reasonable in the provision of developmental assistance to the protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(2) The mentor's and protégé's reported progress made by the protégé in employment, revenues, and participation in NASA contracts during the program participation term.

#### **1819.7214 Measurement of Program success.**

(a) NASA will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the number and dollar value of contracts and subcontract awards to protégés (under

NASA contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the program until two years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protégé (or former protégé) by its mentor (or former mentor); and

(3) An increase in the protégés number of employees from the date of entry into the program until two years after the completion of the agreement.

#### **1819.7215 Solicitation provision and contract clauses.**

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

(1) Any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

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

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

3. Sections 1852.219–77 and 1852.219–79 are revised to read as follows:

#### **1852.219–77 NASA Mentor-Protégé Program.**

As prescribed in 1819.7215, insert the following clause:

#### **NASA MENTOR-PROTÉGÉ PROGRAM (XX/XX)**

(a) Prime contractors 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:

(1) Mentors, which are large businesses and prime contractors with at least one active and approved NASA subcontracting plan;

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, or active NASA SBIR Phase II companies meeting the qualifications defined in FAR Part 2, Definitions of Parts and Terms.

(3) Mentor-protégé agreements, endorsed by the cognizant NASA centers and approved by the NASA Office of Small Business Programs (OSBP);

(4) In contracts with award fee incentives, potential for payment of an award fee for

voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7209.

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

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSBP, Washington, DC 20546, (202) 358-2088, for further information.

(End of clause)

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

As prescribed in 1819.7215, insert the following clause:

#### **MENTOR REQUIREMENTS AND EVALUATION**

(XX/XX)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, and active NASA SBIR Phase II companies meeting the qualifications specified in defined in FAR Part 2, Definitions of Parts and Terms.

(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.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) To what extent the entities participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semiannual reports shall be submitted by the mentor and the protégé to the cognizant NASA center and NASA Headquarters Office of Small Business Programs (OSBP), following the semiannual report template found on the Web site at <http://www.osbp.nasa.gov>.

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

(e) 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 it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7211.

(End of clause)

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**BILLING CODE 7510-01-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[FWS-R1-ES-2008-0096; MO 9221050083-B2]**

**RIN 1018-AW34**

#### **Endangered and Threatened Wildlife and Plants; Listing the Plant *Lepidium papilliferum* (Slickspot Peppergrass) as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), notify the public of the reinstatement of our July 15, 2002, proposed rule to list *Lepidium papilliferum* (slickspot peppergrass) as endangered under the Endangered Species Act of 1973, as amended (Act). We announce the reopening of the public comment period on that proposed listing.

**DATES:** We will accept comments received on or before October 20, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Via the Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *By U.S. mail or hand-delivery to:* Public Comments Processing, Attn: RIN 1018-AW34, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will also post any personal information included with your comments (see the Public Comments section below for more information).

#### **FOR FURTHER INFORMATION CONTACT:**

Jeffery L. Foss, Field Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709 (telephone 208-378-5243; facsimile 208-378-5262). If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments**

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lepidium papilliferum*;

(2) Additional information concerning the range, distribution, and population size of this species; and

(3) Current or planned activities in the subject area and their possible impact on this species.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

In making a final decision on the proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final rule that differs from the proposal.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection