

Federal Communications Commission.
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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1817, 1822, 1823, 1824, 1852, and 1871

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: As part of the National Performance Review initiative to streamline and clarify regulations, NASA is issuing a rewrite of those regulations in its Federal Acquisition Regulations Supplement relating to special contracting methods (part 1817); the application of labor laws to Government acquisitions (part 1822); environment, conservation, occupational safety, and drug-free workplace (part 1823); and the protection of privacy and freedom of information (part 1824). In addition, regulations on midrange procurement procedures (part 1871) are revised to increase certain dollar thresholds and to make other changes to comply with the Federal Acquisition Streamlining Act.

DATES: This rule is effective October 29, 1996.

ADDRESSES: Bruce King, Code HC, NASA Headquarters, 300 E Street, SW, Washington, DC 20546-0001; Tom O'Toole, Code HC, NASA Headquarters, 300 E Street, SW, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358-0478; Mr. Bruce King, (202) 358-0461.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and upon completion of all parts, the NFS will be reissued in a new edition. In addition, Part 1871 is revised to increase the dollar thresholds to which MidRange is applicable and to bring

MidRange into compliance with the changes made to commercial item acquisition made by the Federal Acquisition Streamlining Act. Comments on the test procedure had been requested in 57 FR 57845, December 7, 1992.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1817, 1822, 1823, 1824, 1852, and 1871

Government procurement.
Thomas Luedtke,
*Deputy Associate Administrator for
Procurement.*

Accordingly, 48 CFR chapter 18 is amended as follows:

1.-2. Part 1817 is revised to read as follows:

PART 1817—SPECIAL CONTRACTING METHODS

Sec.

Subpart 1817.1—Multiyear Contracting

1817.105 Policy.
1817.105-1 Uses.

Subpart 1817.2—Options

1817.200 Scope of subpart.
1817.203 Solicitations.
1817.204 Contracts.
1817.206 Evaluation.
1817.207 Exercise of options.
1817.208 Solicitation provisions and contract clauses.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.503 Determinations and findings requirements.
1817.504 Ordering procedures.

Subpart 1817.70—Acquisitions With Military Departments

1817.7000 Scope of subpart.
1817.7001 Authorization and policy.
1817.7002 NASA-Defense Purchase Request and acceptance.
1817.7002-1 Acceptance by Military Department.
1817.7002-2 Changes in estimated total prices.
1817.7002-3 Payments.
1817.7002-4 Contract clause.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.
Authority: 42 U.S.C. 2473(c)(1)

Subpart 1817.1—Multiyear Contracting

1817.105 Policy.

1817.105-1 Uses. (NASA supplements paragraph (b))

(b) The Associate Administrator for Procurement (Code HS) is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105-1(b) (1) through (5) is met by the proposed use of multiyear contracting.

Subpart 1817.2—Options

1817.200 Scope of subpart.

FAR subpart 17.2 applies to all NASA contracts.

1817.203 Solicitations. (NASA supplements paragraph (g))

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

1817.204 Contracts. (NASA supplements paragraph (e))

(e)(i) The 5-year limitation (basic plus option periods) does not apply when the time needed to complete system development or hardware production is greater than five years.

(ii) Requests for deviations from the 5-year limitation policy shall be sent to the Associate Administrator for Procurement (Code HS) and shall include justification for exceeding five years and evidence that the extended years can be reasonably priced.

1817.206 Evaluation. (NASA supplements paragraph (b))

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under 1817.206(b)(i), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.

1817.207 Exercise of options. (NASA supplements paragraph (f))

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the

Associate Administrator for Procurement (Code HS).

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Associate Administrator for Procurement (Code HS). The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

1817.208 Solicitation provisions and contract clauses. (NASA supplements paragraph (c))

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217-5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.503 Determinations and findings requirements. (NASA supplements paragraph (a))

(a)(2) Current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.405 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

1817.504 Ordering procedures. (NASA supplements paragraph (b))

(b)(4) All payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient. The rationale for a longer period shall be documented in the contract file.

Subpart 1817.70—Acquisitions With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, for acquisition of supplies or services by NASA from or through the Military Departments.

1817.70001 Authorization and policy.

(a)(1) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the acquisition services, personnel, equipment, and facilities of the Military

Departments, with their consent and with or without reimbursement, and, on a similar basis, to cooperate with the Military Departments in the use of acquisition services, equipment, and facilities.

(2) Although the Space Act provides interagency transaction authority nearly equivalent to the Economy Act, NASA has elected to conform its implementation of the Space Act to the requirements of the Economy Act. Therefore, unless exempt from the Economy Act for reasons other than the general authority of the Space Act, interagency acquisitions shall be supported by an Economy Act Determination and Finding (see FAR 17.503 and 1817.503). This requirement applies to all acquisitions from the Military Departments or other agencies.

(b) The Military Departments have agreed to cooperate fully with NASA in making their acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting acquisition of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with subpart 1804.71. The form shall not be used for requesting—

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and

stock for military use or in-house service, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) The contracting officer shall include a provision in the order in accordance with 1817.504(b)(4).

(c) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002-72.

1817.7002-1 Acceptance by Military Department.

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2. Each DD Form 448-2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

1817.7002-2 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 7, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the cognizant NASA contracting office shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

1817.7002-3 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments shall be made by that NASA office designated in block 9 of the NASA-Defense Purchase Request upon receipt of Standard Form 1080. Billings will be supported in the same manner as billings between Military Departments.

1817.7002-4 Contract clause.

The contracting officer shall insert the clause at 1852.217-70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71—Exchange or Sale of Personal Property**1817.7101 Policy.**

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from the sale to the acquisition of similar property for replacement purposes. The transaction must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NHB 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101-46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

3. Part 1822 is revised to read as follows:

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**1822.000-70 Scope of part.****Subpart 1822.1—Basic Labor Policies****1822.101 Labor relations.****1822.101-1 General.****1822.101-3 Reporting labor disputes.****1822.101-4 Removal of items from contractors' facilities affected by work stoppages.****1822.101-70 Admission of labor representatives to contract sites.****1822.103 Overtime.****1822.103-4 Approvals.****Subpart 1822.3—Contract Work Hours and Safety Standards Act****1822.302 Liquidated damages and overtime pay.****Subpart 1822.4—Labor Standards for Contracts Involving Construction****1822.400-70 Contracts with the Department of Labor.****1822.404-3 Procedures for requesting wage determinations.****1822.406-8 Investigations.****1822.406-9 Withholding from or suspension of contract payments.****1822.406-13 Semiannual enforcement reports.****Subpart 1822.6—Walsh-Healey Public Contracts Act****1822.604 Exemptions.****1822.604-2 Regulatory exemptions.****1822.608 Procedures.****1822.608-4 Award pending final determination.****Subpart 1822.8—Equal Employment Opportunity****1822.804 Affirmative action programs.****1822.804-2 Construction.****1822.807 Exemptions.****1822.810 Solicitation provisions and contract clauses.****Subpart 1822.10—Service Contract Act of 1965****1822.1001 Definitions.****1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).****1822.1008-270 Additional information for the preparation of SF 98/98a.****1822.1008-7 Required time of submission of Notice.****Subpart 1822.13—Special Disabled and Vietnam ERA Veterans****1822.1303 Waivers.****1822.1306 Complaint procedures.****Subpart 1822.14—Employment of the Handicapped****1822.1403 Waivers.****1822.1406 Complaint procedures.**

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

1822.000-70 Scope of part.

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

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

Subpart 1822.1—Basic Labor Policies**1822.101 Labor relations.****1822.101-1 General. (NASA supplements paragraph (d))**

(d) When a strike that may have an adverse effect on NASA programs is

imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall:

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

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

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

1822.101-3 Reporting labor disputes.

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

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

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

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

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

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

(6) Recommended action to be taken by NASA.

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

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

1822.101-70 Admission of labor representatives to contract sites.

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

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

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

Subpart 1822.3—Contract Work Hours and Safety Standards Act**1822.302 Liquidated damages and overtime pay. (NASA supplements paragraphs (c) and (d))**

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

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

Subpart 1822.4—Labor Standards for Contracts Involving Construction**1822.400-70 Contacts with the Department of Labor.**

All contacts with the Department of Labor required by FAR subpart 22.4 shall be conducted through the Headquarters Contractor Industrial Relations Office (Code JLR). Contracting officers shall submit all pertinent information to Code JLR in support of the required contacts.

1822.404-3 Procedures for requesting wage determinations.

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

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

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

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

1822.406-9 Withholding From or suspension of contract payments. (NASA supplements paragraph (c))

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

1822.406-13 Semiannual enforcement reports.

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

Subpart 1822.6—Walsh-Healey Public Contracts Act**1822.604 Exemptions.****1822.604-2 Regulatory exemptions. (NASA supplements paragraph (c))**

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

1822.608 Procedures.

All contacts with other agencies required by FAR 22.608 shall be conducted through Code JLR. Contracting officers shall submit all pertinent information to Code JLR in support of the required contacts.

1822.608-4 Award pending final determination. (NASA supplements paragraph (b))

(b)(1) The procurement officer shall approve, with the concurrence of Code JLR, certifications for immediate award.

(2) Code JLR will notify other agencies of the determination to award, and the contracting officer shall notify the protester.

Subpart 1822.8—Equal Employment Opportunity**1822.804 Affirmative action programs.****1822.804-2 Construction. (NASA supplements paragraph (b))**

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

1822.807 Exemptions.

Requests for exemption pursuant to FAR 22.807(a)(1), (a)(2), or (b)(5) shall

be sent to the Headquarters Office of Procurement (Code HS).

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

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

Subpart 1822.10—Service Contract Act of 1965**1822.1001 Definitions.**

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

1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).**1822.1008-270 Additional information for the preparation of SF 98/98a.**

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

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

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

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

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

(c) Item 10. Add the solicitation number.

(d) Item 12. (1) When entering into a new service contract, list all classes of work expected to be performed under

the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) of this subsection), list only the classes of work that the incumbent indicates are "nonexempt."

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

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

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

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

1822.1008-7 Required time of submission of Notice. (NASA supplements paragraphs (a), (b), (c), and (d))

(a) Contracting officers shall submit the notices to Code JLR at least 70 days before initiating the associated contract actions.

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

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

(d) See paragraph (c) of this section.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1303 Waivers. (NASA supplements paragraph (c))

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

1822.1306 Complaint procedures.

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

Subpart 1822.14—Employment of the Handicapped

1822.1403 Waivers. (NASA supplements paragraph (c))

(c) Requests for waivers shall be submitted to the Associate

Administrator for Equal Opportunity Programs (Code E).

1822.1406 Complaint procedures.

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

4. Part 1823 is revised to read as follows:

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

Sec.

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award.

1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

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

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

1823.570-1 Scope.

1823.570-2 Definitions.

1823.570-3 Contract clause.

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

Subpart 1823.70—Safety and Health

1823.7001 NASA contract clauses.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

1823.7102 Procedures.

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

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award. (NASA supplements paragraph (a))

(a) Notifications shall be submitted through the procurement officer and the Associate Administrator for Procurement (Code HS).

1823.107 Compliance responsibilities.

Notifications under FAR 23.107 shall be submitted through the same channels as under 1823.106.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

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

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

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

1823.570-1 Scope.

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

1823.570-2 Definitions.

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

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

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

1823.570-3 Contract clause.

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

solicitations and contracts for commercial items (see FAR parts 2 and 12).

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

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

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

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

1823.70—Safety and Health

1823.7001 NASA contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223-70 shall be included in—

(1) All negotiated contracts of \$1,000,000 or more;

(2) All construction, repair, or alteration contracts in excess of the simplified acquisition threshold;

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

(4) Any acquisition regardless of dollar amount when:

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

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

(b) The clause prescribed in paragraph (a) of this section may be excluded

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR subpart 22.10) in which the application of the act and its implementing regulations constitute adequate safety and health protection;

(2) When the contracting officer makes a written determination that the clause is not necessary under the circumstances of the acquisition, and;

(3) Exclusion of the clause is approved by the installation safety and health official.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. The contracting officer shall include the approved plan in any resulting contract.

(d) When the installation safety and health official recommends that a Safety and Health Plan be submitted by the apparently successful offeror after notification of selection but before contract award, the provision at 1852.223-73 shall be used with its Alternate I.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

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

1823.7102 Procedures.

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

5. Part 1824 is revised to read as follows:

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

Subpart 1824.2—Freedom of Information Act

1824.202 Policy.

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

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

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

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

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the

purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

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

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

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

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

Subpart 1824.2—Freedom of Information Act

1824.202 Policy. (NASA supplements paragraphs (a) and (b))

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

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

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1852.222-71 [Removed]

6. Section 1852.222-71 is removed.

1852.223-72 [Removed]

8. Section 1852.223-72 is removed.

1852.223-73 [Amended]

9. In section 1852.223-73, the citation "1823.7004(e)" is revised to read "1823.7001", and in Alternate I, the citation "1823.7004(f)" is revised to read "1823.7001".

10. Part 1871 is revised to read as follows:

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.000 Scope of part.

Subpart 1871.1—General

1871.101 Purpose.

1871.102 Authority.

1871.103 Applicability.

1871.104 Definitions.

1871.105 Policy.

Subpart 1871.2—Planning and Requirements Process

1871.201 Use of buying team.

1871.202 Organizational responsibilities.

1871.202-1 Requiring organization.

- 1871.202-2 Procurement organization.
- 1871.202-3 Supporting organizations.
- 1871.202-4 Center management.
- 1871.203 Buying team responsibilities.
- 1871.204 Small business set-asides.

Subpart 1871.3—Publicizing of Solicitation

- 1871.301 Publicizing policy.
- 1871.302 Publicizing procedure.
- 1871.303 Special situations.

Subpart 1871.4—Request for Offer (RFO)

- 1871.400 General.
- 1871.401 Types of RFO's.
- 1871.401-1 Sealed offers.
- 1871.401-2 Two-step competitive procurement.
- 1871.401-3 Competitive negotiated procurement not using qualitative criteria.
- 1871.401-4 Competitive negotiation using qualitative criteria (Best Value Selection).
- 1871.401-5 Noncompetitive negotiations.
- 1871.401-6 Commercial items.
- 1871.402 Preparation of the RFO.
- 1871.403 Offer preparation period and limitations.
- 1871.404 Protection of offers.
- 1871.405 RFO by NAIS (applicable to procurements meeting the thresholds in 1871-302(a)).

Subpart 1871.5—Award

- 1871.501 Representations and certifications.
- 1871.502 Determination of responsible contractor.
- 1871.503 Negotiation documentation.
- 1871.504 Award documents.
- 1871.505 Notifications to unsuccessful offerors.
- 1871.506 Publication of award.
- 1871.507 Debriefing of unsuccessful offerors.

Subpart 1871.6—"Best Value Selection"

- 1871.601 General.
 - 1871.602 Specifications for MidRange procurements.
 - 1871.603 Establishment of evaluation criteria.
 - 1871.604 Evaluation phases.
 - 1871.604-1 Initial evaluation.
 - 1871.604-2 Determination of "Finalists".
 - 1871.604-3 Discussions with "Finalists".
 - 1871.604-4 Selection of "Best Value" Offer.
- Authority: 42 U.S.C. 2473(c)(1).

1871.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, including commercial items, and services.

Subpart 1871.1—General

1871.101 Purpose.

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process.

1871.102 Authority.

The Office of Federal Procurement Policy has provided authority for NASA

to conduct a pilot test of a new procurement process within the scope of this part.

1871.103 Applicability.

(a) This part applies to all acquisitions, as described in 1871.103(b), conducted at NASA installations except as provided in 1871.401-4(a)(3).

(b) This part applies to all contract actions the aggregate amount of which is greater than the simplified acquisition threshold (SAT) (FAR part 13) and not more than \$2,000,000 in basic value (not more than \$10,000,000 with options) and for commercial items (FAR part 12) not more than \$25,000,000 including options. This part may be used for commercial item contracts above \$25,000,000 at the installation's discretion.

(c) For other than commercial items, if the Government estimate for the basic award amount or any option amount, if any, exceeds the limits of 1871.103(b), the procurement will be processed under FAR and NFS procurement procedures applicable to large procurements (see FAR parts 14 and 15). When the estimate is within the range of 1871.103(b) and the procurement was started using these procedures but the offered prices/costs exceed the MidRange ceiling, the procurement may continue under MidRange procedures, provided that:

(1) The price/cost can be determined to be fair and reasonable,

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large procurements, and

(3) The procurement does not exceed \$3,000,000 for the basic requirement or \$15,000,000 for the total requirement.

1871.104 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) *NASA Acquisition Internet Service* or *NAIS* means the Internet home page (URL: <http://procurement.nasa.gov>) through which users may access documents available in electronic format.

(b) *MidRange procurement procedure* means a set of procedures within the authority of 1871.102 and the applicability of 1871.103.

(c) *Request for Offer (RFO)* means the solicitation used to request offers for all authorized MidRange procurements.

(d) *Clarification and Discussion* are used as defined in FAR 15.601.

(e) *Commercial item* is used as defined in FAR 2.101.

1871.105 Policy.

(a) Under MidRange procedures, cost or pricing data and certification thereof shall be in accordance with FAR 15.804.

(b) Procurements conducted under part 1871, unless otherwise properly restricted under the provisions of FAR part 6, are considered to be full and open competition after exclusion of sources in accordance with FAR 6.203, Set-asides for small business concerns, or full and open competition in accordance with FAR part 6, subpart 6.1.

(c) Options may be included in the acquisition provided they conform to 1871.103(b) or do not exceed \$10,000,000 for the total requirement (\$25,000,000 for commercial items), options included.

(d) The appropriate part 1871 post-selection processes (negotiation, award, and publication of award) may be used to the extent applicable for Small Business Innovation Research (SBIR), broad agency announcements, unsolicited proposals, and Small Business Administration 8(a) procurement actions within the applicability of 1871.103(b).

(e) The NAIS will be used to the maximum extent practicable to disseminate advance procurement information and conduct part 1871 procurements.

(f) Use of locally generated forms is encouraged where their use will contribute to the efficiency and economy of the process. NASA Forms 1667, Request for Offer, and 1668, Contract, or computer generated versions of these forms may be used as the solicitation and contract cover sheets, respectively, except that the SF1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair) shall be used for construction acquisitions and the SF1449, Solicitation/Contract/Order for Commercial Items, shall be used for commercial item acquisitions. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.406).

Subpart 1871.2—Planning and Requirements Process

1872.201 Use of buying team.

MidRange procedures are based on the use of a buying team to conduct the procurement. The concept is to designate individuals who are competent in their respective functional areas, provide those individuals with the basic authority to conduct the procurement and hold them accountable

for the results. The buying team will normally consist of one technical member and one procurement member, but may be augmented with additional members as necessary. Personnel providing normal functional assistance to the team (e.g., legal, financial) will not be considered a part of the team unless so designated. To function properly, the team should be given the maximum decision authority in matters related to the procurement. When higher level management approvals remain essential, it will be incumbent upon the functional team member to obtain such approvals.

1871.202 Organizational responsibilities.

1871.202-1 Requiring organization.

The requirements organization shall appoint, by name, the technical member of the buying team. This individual will normally be an end user or the one most familiar with the technical aspects of the requirement. The individual appointed, whatever the relationship with the procured item, is expected to totally fulfill the responsibilities to the buying team.

1871.202-2 Procurement organization.

The procurement organization shall appoint the procurement member of the buying team. This individual shall be a warranted contracting officer or a contract specialist with broad latitude to act for the contracting officer. The procurement member shall be the team leader with the ultimate responsibility to conduct the procurement.

1871.202-3 Supporting organizations.

Buying team members may require additional team members to perform specialized functions or to assist in the evaluation of offers. Requests for supporting members shall be made by the organization identifying the need for the support and directed to the appropriate management level in the supporting organization. Supporting team members, once designated for the team, shall fulfill all applicable responsibilities to the team as other members.

1871.202-4 Center management.

Center managers shall, to the maximum extent practical and consistent with their responsibilities to manage the Center mission, convey sufficient authority to members of the buying team to conduct the procurement. Administrative or technical approvals should be minimized, and where deemed essential, facilitated to the maximum extent practicable. Center managers should lend their full support to the

buying team should problems arise from the procurement.

1871.203 Buying team responsibilities.

(a) The buying team shall conduct the procurement in a manner that best satisfies the user requirements and meets the norms expected of a Government procurement. Team members should develop open communications, rely on decisions of other responsible functional team members and meet their obligations to the team. The team will typically—

- (1) Refine the final specifications for the solicitation;
 - (2) Decide the most appropriate solicitation method;
 - (3) Establish milestones for the procurement;
 - (4) Finalize the evaluation criteria;
 - (5) Develop the RFO and model contract; and
 - (6) Evaluate offers and determine the awardee.
- (b) The procurement member of the buying team shall lead clarifications, discussions, and negotiations; shall be the source selection official; and shall conduct debriefings.

1871.204 Small business set-asides.

(a) Except as provided in paragraphs (b) through (e) of this section, each MidRange acquisition shall be reserved exclusively for small business concerns.

(b) The requirement for small business MidRange set-asides does not relieve the buying office of its responsibility to procure from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and multiple award Federal Supply Schedule contracts.

(c) Procurements not conducted as small business set-asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR part 6.

(d) If the buying team procurement member determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the buying team need not proceed with the small business set-aside and may purchase on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document the contract file with the reason for the unrestricted procurement.

(e) If the buying team proceeds with the small business MidRange set-aside and receives an offer from only one responsible small business concern at a

reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the procurement on an unrestricted basis utilizing MidRange procedures. The buying team procurement members shall document in the file the reason for the unrestricted purchase.

(f) Each model contract under a small business MidRange set-aside shall contain the clause at FAR 52.219-6, Notice of Total Small Business Set-Aside.

Subpart 1871.3—Publicizing of Solicitation

1871.301 Publicizing policy.

(a) Use of the MidRange procedure is intended to streamline and expedite the acquisition process. Publication requirements for synopses are streamlined; however, it is in the Government's interest to provide as much advance notice as possible of a pending acquisition in order for the Government to obtain maximum competition.

(b) The dollar thresholds stated in 1871.302 are lower than the MidRange thresholds in 1871.103. They are based on Section 5062 of the Federal Acquisition Streamlining Act.

1871.302 Publicizing procedure.

(a) Synopses are not to be sent to or published in the Commerce Business Daily except if the basic award is expected to exceed \$500,000, the total amount of the basic award plus options is expected to exceed \$2,500,000, or annual obligations are expected to exceed \$500,000 in any one year. For those acquisitions published both in the CBD and on the NAIS, the CBD publication date is the basis upon which the time frames specified in FAR 5.203 are calculated.

(b) A synopsis for each requirement shall be published on the NAIS prior to or simultaneously with the actual release of the solicitation.

(c) The synopsis shall comply with the requirements set forth in FAR 5.207(b) and shall:

(1) Include a statement that the competitive solicitation will be released via the NAIS, that potential offerors will be responsible for downloading their own copy of the solicitation, and that hard copies of the solicitation will not be mailed, and

(2) State the projected solicitation release date if the synopsis is published

prior to solicitation release, provide notice that it is the offeror's responsibility to monitor the NAIS for solicitation release as the solicitation will be released as soon as practicable whether prior or subsequent to the projected date, and identify the name, telephone number, fax number, and e-mail address of a point of contact. The synopsis shall be updated to reflect significant changes to the original notice.

(d) For commercial item purchases, the streamlined solicitation (combined presolicitation notice and solicitation described in FAR part 12) may be used.

1871.303 Special situations.

Notices for special situations as described in FAR 5.205 involving MidRange Procurements must be published in the Commerce Business Daily. Such special situations include R&D sources sought, intent to sponsor or change the mission of a Federally Funded Research and Development Center, effort to locate commercial sources under OMB Circular No. A-76, and Section 8(a) competitive national buy acquisitions.

Subpart 1871.4—Request for Offer (RFO)

1871.400 General.

In MidRange procedures, solicitation of sources shall be accomplished by use of an RFO. The RFO will be solely a solicitation document incorporating only those elements of information required to solicit the offer. Offers will be provided on a model contract furnished with the RFO.

1871.401 Types of RFO'S.

The RFO may be used for all types of procurements to which MidRange is applicable. The distinguishing difference will be the evaluation and award criteria specified in the RFO. This, in turn, will be driven by the buying team's decisions on the extent of discussion required, the amount of non-price factors that will influence the award and the amount of competition available. If the conditions in FAR 6.401(a) are met, the RFO's described in 1871.401-1 and 1871.401-2 shall be used; otherwise, RFO's described in 1871.401-3, 1871.401-4, 1871.401-5, or 1871.401-6 may be used. Once the evaluation and award criteria have been specified in the RFO, the procurement must conform to the procedures applicable to these criteria, unless changed by formal amendment to the RFO.

1871.401-1 Sealed offers.

(a) Policy. RFO's may specify that award will be made to the low, responsive, responsible offeror providing the most advantageous offer considering only price and price-related factors. This method shall be used when (1) time permits the solicitation, submission, and evaluation of sealed offers; (2) award will be made on the basis of price and other price-related factors; (3) conducting discussions with the offerors is not necessary; and (4) a reasonable expectation of receiving more than one offer exists. The RFO shall be in compliance with the requirements of FAR part 14 relating to Sealed Bidding.

(b) Procedures. (1) The RFO shall request offerors to provide a complete offer by the closing date specified.

(2) In accordance with FAR part 14, offers (whether received by facsimile or sealed envelope delivery) shall be publicly opened at the designated time and place. Interested members of the public will be permitted to attend the opening. Offers shall be abstracted pursuant to FAR part 14 and be available for public inspection. The abstract shall be included in the contract file.

(3) All offers shall be examined for mistakes in accordance with FAR 14.406. The buying team shall determine that a prospective contractor is responsible and that the prices offered are reasonable (see FAR 14.407-2).

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

1871.401-2 Two-step competitive procurement.

(a) Policy. (1) RFO's may specify that evaluation and award may be conducted in two distinct steps, similar in concept to "Two Step Sealed Bidding." The MidRange Two Step process should be used when it is desirable to award to the lowest, responsive, responsible offeror after determining that the initial technical offer, or the revised technical offer, is acceptable.

(2) The procedures of FAR 14.503-2(a) shall be used once Step Two of this process begins.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified. Price offers are requested to ensure that they are accomplished in a timely manner and to reduce the time required for Step Two.

(2) Step One. The technical offer will be evaluated to determine if the product or service offered is acceptable. The buying team may proceed directly to Step Two if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional offers acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the buying team procurement member shall enter into discussions and request offeror(s) whose offer(s) is susceptible to being made acceptable to submit additional clarifying or supplementing information to make it acceptable (see FAR 14.503-1). It is expected that these discussions will be conducted on an informal basis. After completion of discussions, the buying team shall proceed to Step Two.

(3) Step Two. If discussions were held, the buying team shall afford all offerors who have submitted acceptable offers and those offers with whom discussions were conducted, an opportunity, by a common date, to revise their price offers. No changes to technical offers will be permitted during this process. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each offeror. The procedures at 1871.401-1(b) (2) and (3) shall then be followed.

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

1871.401-3 Competitive negotiated procurement not using qualitative criteria.

(a) Policy. (1) RFO's may provide for discussion of all aspects of the offer but award is based on the technically acceptable offer having the lowest price (if fixed price) or the lowest most probable cost (if cost reimbursable). This method should be used when qualitative factors are not material in the award decision, but it is important to assure that technical offers and contract terms are fully compliant with the Government's needs. This method also permits direct discussion of price with offerors and is particularly appropriate when different approaches can be offered to satisfy the Government's need.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215-16, Alternate II, will be included

in all RFO's for competitive negotiated procurements not using qualitative criteria except for solicitations for commercial item acquisitions.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified.

(2) *Initial evaluation.* The buying team shall review each offer to determine if all required information has been provided. No further evaluation shall be made of any offer that is deemed unacceptable because it does not meet the technical requirements of the RFO and is not reasonably susceptible to being made so. Offerors may be contacted for clarification purposes only during the initial evaluation. Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefore and excluded from further consideration. Documentation for such rejection should consist of one or more succinct statements of fact that show the offer is not acceptable. No documentation is required if all offers are deemed to be acceptable or reasonably susceptible to being made so.

(3) *Determination of finalists.* From among the acceptable offers and those susceptible to being made acceptable, the buying team shall rank the offers based on price (or most probable cost) and exclude any whose price/most probable cost precludes any reasonable chance of being selected for final award. The remaining offers constitute the "finalists" for the contract. Only in exceptional cases will this number be less than two offers. The procurement buying team member shall succinctly record the basis for the decision.

(4) *Discussions.* The procurement buying team member shall lead discussions with each finalist. The discussions are intended to assist the buying team in fully understanding each finalist's offer and to assure that all finalists are competing equally on the basis intended. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.610. It is expected that discussions will be conducted on an informal basis with each finalist. After completion of discussions, each finalist shall be afforded an opportunity to revise its offer to support and clarify its offer. A reasonable amount of time (Normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each finalist. Such discussions are not required if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional

proposals acceptable and thereby increase competition, would not be in the Government's interest.

(5) *Selection.* The procurement team member shall be the source selection official. The source selection official may elect to make selection in lieu of determining finalists provided that it can be demonstrated that (i) selection of an initial offer(s) will result in the lowest price/cost to the Government and (ii) discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to evaluated price/cost. It is expected that the source selection statement will not ordinarily exceed one page and that the basis for the decision will be apparent upon review of the informal worksheets used in the evaluation process. These informal worksheets shall be included in the contract file.

(6) The names of offerors determined to be finalists or the name of the offeror selected for contract award will be electronically transmitted to all offerors. This will serve as notification to those offers that were not selected for further evaluation (see 1871.505).

1871.401-4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) Policy. (1) MidRange procurements shall normally use the BVS source selection method, prescribed in part 1871, subpart 1871.6, when it is desirable to base evaluation and award on a combination of price and non-price qualitative criteria.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215-16, Alternate II, will be included in all RFO's for competitive negotiated procurements using qualitative criteria except for solicitations for commercial item acquisitions.

(3) In exceptionally complex procurements, a source selection method other than MidRange Best Value Selection may be more appropriate. This may be appropriate in cases in which the following factors cannot be accommodated within the MidRange/BVS selection methodology:

(i) The ability to predefine the value characteristics that will constitute the discriminators among the offers;

(ii) The complexity of the interrelationships that must be evaluated;

(iii) The number of evaluators required to address the disciplines that will be involved in the offers; or

(iv) The impact that the procurement may have on higher level mission

management (level of selection official) or future procurements.

(b) Procedures. (1) The buying team will determine which of the source selection methodologies is most appropriate to the specific procurement.

(2) The team shall record its rationale for selecting a methodology rather than BVS. Once this decision is made, the team shall no longer function as a MidRange buying team, but shall follow the instructions prescribed in the local procedures for the source selection method.

1871.401-5 Noncompetitive negotiations.

(a) Policy. (1) The RFO may be used as the solicitation method for noncompetitive procurements.

(2) MidRange procedures may be used in noncompetitive acquisitions to the extent they are applicable.

(b) Procedures. (1) Within the dollar thresholds specified in 1871.302(a), posting a synopsis on the NAIS meets the requirement of FAR 5.201 and complies with the notice required by the Competition in Contracting Act. A synopsis is not required if one of the exceptions of FAR 5.202 is met.

(2) The buying team shall require submission of certified cost and pricing data in accordance with FAR 15.804-2.

(3) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

1871.401-6 Commercial items.

(a) Policy. (1) MidRange procedures are considered consistent with the requirements of FAR part 12, Acquisition of Commercial Items. In the event of a conflict, however, FAR part 12 takes precedence.

(2) MidRange Procedures shall be used for commercial item procurements except that type of contract is limited by FAR 12.207.

(b) Procedures. The offices will be evaluated in accordance with applicable procedures, and shall include consideration of technical, past performance, and price.

1871.402 Preparation of the RFO.

(a) The RFO shall provide all standard information required for the offeror to submit an offer.

(b) The RFO shall contain space for all necessary additional instructions to offerors. As a minimum, the RFO shall contain the following:

(1) Incorporation by reference of all required standard provisions.

(2) A provision notifying offerors that standard Representations and Certifications will be required.

(3) Evaluation and award criteria.

(4) A provision requiring offerors to submit offers on an attached model contract.

(c) Requirements for the content and format of the offer should be the minimum required to provide for proper evaluation. Offerors' formats should be allowed to the maximum extent possible.

(d) Facsimile offers, defined by FAR 14.202-7 and 15.402(i), are authorized for MidRange procurements.

1871.403 Offer preparation period and limitations.

For procurements which are synopsisized solely on the NAIS, the buying team should establish deadlines for receipt of offers based on an assessment of the minimum amount of time required to respond to the solicitation. The time required will depend on the complexity of the requirement and amount of cost and technical information required to be submitted. The information required shall be limited to the amount required to conduct a proper evaluation. The offer preparation period established in the RFO shall not be less than 15 calendar days unless the procurement is urgent. For procurements which are synopsisized on the NAIS and published in the CBD, FAR requirements for waiting times and deadlines for the receipt of offers apply.

1870.404 Protection of offers.

A facsimile machine(s) shall be dedicated for receipt of offers and placed in a secure location where offers received on it can be safeguarded. All offers submitted shall be recorded, sealed in an envelope marked with the RFO number and taken to the buying team procurement member. Facsimile attendants shall make a good faith effort to inspect the document for completeness and legibility. If the attendant believes there are missing or illegible pages, the document will be promptly referred to the buying team procurement member for notification to the offeror that it should resubmit the offer. The Government shall not assume responsibility for proper transmission.

1871.405 RFO by NAIS (applicable to procurement meeting the thresholds in 1871.302(a)).

(a) Competitive solicitations for MidRange Procurements shall be made available on the NAIS. Solicitations available on the NAIS are exempt from the requirement in FAR 14.203-1 that delivery of the solicitations be made pursuant to FAR 14.205.

(b) For the purposes of FAR 15.402(a), a solicitation posted on the NAIS is a written solicitation.

(c) Solicitations posted on the NAIS in accordance with the regulations in this part are exempt from the requirement in FAR 15.408(a) to issue solicitations using the procedures in FAR part 5.

Subpart 1871.5—Award

1871.501 Representations and certifications.

Upon determination of the successful offeror, the buying team procurement member will determine if the offeror has on file valid Representations and Certifications. If the offeror has not completed the required forms, or they have expired, the offeror will be requested to provide the forms promptly. Should the offeror refuse to provide the required Representations and Certifications or fail to meet a required condition, the buying team shall reject the offer and proceed to the next highest ranked offeror who is responsive and responsible.

1871.502 Determination of responsible contractor.

Contractor responsibility shall be determined in accordance with FAR part 9.

1871.503 Negotiation documentation.

The prenegotiation memorandum, if required, and the results of negotiation will be in abbreviated form and will be approved by the buying team.

1871.504 Award documents.

Contract award shall be accomplished by contracting officer execution of the contract document and providing a paper copy to the successful offeror. If facsimile documents were used in the evaluation process, the successful offeror may be required to execute original copies of the contract to facilitate legibility during the administration phase of the contract.

1871.505 Notifications to unsuccessful offerors.

For solicitations that were posted on the NAIS, a preaward notice shall be electronically transmitted to the offerors. This notice meets the requirements of FAR 15.1001. However, the preaward notice in a small business set-aside must allow unsuccessful offerors 5 working days to challenge the small business status of the successful offeror.

1871.506 Publication of award.

An award notice shall be posted on the NAIS for 7 calendar days after

posting, if the contract offers subcontracting opportunities or if it is subject to the Trade Agreements Act. The information required by FAR 5.207 shall be included in the award notice in abbreviated form.

1871.507 Debriefing of unsuccessful offerors.

The procurement buying team member shall conduct debriefings if requested.

Subpart 1871.6—"Best Value Selection"

1871.601 General.

(a) Best Value Selection (BVS) seeks to select an offer based on the best combination of price and qualitative merit of the offers submitted and reduce the administrative burden on the offerors and the Government.

(b) BVS takes advantage of the lower complexity of MidRange procurements and predefines the value characteristics which will serve as the discriminators among offers. It eliminates the use of area evaluation factors and the highly structured scoring.

1871.602 Specifications for MidRange procurements.

BVS refines the traditional approach to preparing specifications. BVS envisions that the requirement will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's needs by a separate set of value characteristics which establish what the Government considers to be valuable in an offer. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

1871.603 Establishment of evaluation criteria.

(a) The requiring organization will provide, along with the requirement, a list of value characteristics against which the offers will be judged. There is no limit to the number or the type of characteristics that may be specified. The only standard will be whether the characteristic is rationally related to the need specified in the specification. Characteristics may include such factors as improved reliability, innovativeness of ideas, speed of service, demonstrated delivery performance, higher speeds, ease of use, qualifications of personnel, solutions to operating problems, level of service provided on previous similar contracts, or any of numerous other

characteristics that may be of value to the Government in satisfying its needs.

(b) Cost and technical will be considered equal in importance. The value characteristics will not be assigned weights.

(c) All subsequent evaluations will consider these characteristics when determining the finalists or making the final selection for award.

1871.604 Evaluation phases.

1871.604-1 Initial evaluation.

(a) Offers will be reviewed to determine if all required information has been provided and the offeror has made a reasonable attempt to present an acceptable offer. Offerors may be contacted only for clarification purposes during the initial evaluation. No further evaluation shall be made of any offer that is deemed unacceptable because:

(1) It does not represent a reasonable effort to address itself to the essential requirements of the RFO or clearly demonstrates that the offeror does not understand the requirements of the RFO;

(2) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure; or

(3) In R&D procurement, a substantial design drawback is evident in the offer and sufficient correction or improvement to consider the offer acceptable would require virtually an entirely new offer.

(b) Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefor and excluded from further consideration.

(c) *Documentation.* If it is concluded that all offers are acceptable, then no documentation is required and evaluation proceeds. If one or more offers are not acceptable, the procurement member of the team will notify the offeror of the rejection and the reasons therefor. The documentation should consist of one or more succinct statements of fact that show the offer is not acceptable.

1871.604-2 Determination of "Finalists".

(a) All acceptable offers will be evaluated against the requirement and the value characteristics. Based on this evaluation, the team will identify the finalists from among the offers submitted. Finalists will include all offers having a reasonable chance of being selected for award, as prescribed in FAR 15.609 for competitive range. Generally, finalists will include the offer having the best price (or lowest most probable cost) and the offer having the

highest qualitative merit, plus those determined to have the best combination of price and merit. Offers not qualifying as finalists will be excluded from the balance of the evaluation process.

(b) The selection official may elect to make selection in lieu of determining finalists, provided it can be clearly demonstrated that

(1) Selection of an initial offer(s) will result in the best value for the Government, considering both price and non-price qualitative criteria;

(2) Discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to the best value offer(s), and

(3) The solicitation contains a provision permitting award without discussions.

(c) *Documentation.* If finalists are identified as discussed in paragraph (a) of this section, the documentation expected and required to result from this phase of evaluation is approximately one-quarter of a page for each finalist. The documentation shall succinctly describe how the value characteristics in the RFO were provided by the offeror and cost/price considerations that caused the offer to qualify as a finalist. The evaluator(s) shall not be required to justify why other offers provided less qualitative merit. It is expected that, should the decision be challenged, the documented reason for selection, when compared with the non-selected offer, shall clearly demonstrate the difference that resulted in non-selection. It is expected and recommended that all informal worksheets used in the evaluation process be included in the contract file. When selection of the successful offeror(s) is made, the buying team shall document the selection in accordance with 1871.604-4(c).

(d) The names of offerors determined to be finalists or selected for contract award will be electronically transmitted to all offerors. This will serve as notification to those offerors that were not selected for further evaluation (see 1871.505).

1871.604-3 Discussions with "Finalists".

(a) The procurement team member shall lead discussions with each finalist. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.610. It is expected that these discussions will be conducted on an informal basis with each finalist.

(b) After completion of discussions, each finalist shall be afforded an opportunity to revise its offer. A reasonable amount of time (normally

less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each finalist.

1871.604-4 Selection of "Best Value" Offer.

(a) The procurement team member shall be the source selection official.

(b) The BVS source selection is based on the premise that, if all offers are of approximately equal qualitative merit, award will be made to the offer with the lowest evaluated price (fixed-price contracts) or the lowest most probable cost (cost type contracts). However, the Government will consider awarding to an offeror with higher qualitative merit if the difference in price is commensurate with added value. Conversely, the Government will consider making award to an offeror whose offer has lower qualitative merit if the price (or cost) differential between it and other offers warrant doing so.

(c) *Documentation.* Rationale for selection of the successful offeror shall be recorded in a selection statement which succinctly records the value characteristics upon which selection was made. The statement need not and should not reveal details of the successful offer that are proprietary or business sensitive. Since the value characteristics are expressed in performance terms, the reasons for selection can focus on results to be achieved, rather than the detailed approach the offeror will use. The statement shall also comment on the rationale used to equate cost and qualitative merit. Little or no additional analysis is required when the selected offeror possessed the highest merit and lowest price. When a marginal analysis is made between value characteristics and price (or cost)—in most cases this will be a subjective, integrated assessment of all pertinent factors—specific rationale should be provided to the extent possible. It is expected that the statement will not ordinarily exceed one page. Where the procurement is closely contested, it would be prudent to expand on the rationale provided in the statement.

(d) The name of the offeror(s) selected for award shall be electronically transmitted to the offerors which will serve as a notification to those offerors that were not selected (see 1871.505). The selection statement may be made available at the buying team's discretion.

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