

will not institute a second comment period on this action.

**DATES:** The direct final rule published at 71 FR 51489 on August 30, 2006 is withdrawn as of October 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886-6052, [Rosenthal.steven@epa.gov](mailto:Rosenthal.steven@epa.gov).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, and Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: October 6, 2006.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

#### PART 40—[AMENDED]

■ Accordingly, the amendments to 40 CFR 52.777 and 81.315 published in the **Federal Register** on August 30, 2006 (71 FR 51489) on pages 51489–51500 is withdrawn as of October 19, 2006.

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#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Parts 1819 and 1852

RIN 2700-AD17

##### Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Contractor Recertification of Program Compliance

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

**ACTION:** Final rule.

**SUMMARY:** This rule adopts the proposed rule published in the **Federal Register** on September 30, 2005 as final with minor, non-substantive editorial changes. The final rule amends the NASA FAR Supplement (NFS) to include a requirement for NASA's Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) program contractors to complete a recertification of program

compliance prior to final payment. This requirement is being established to facilitate the Government's ability to hold contractors accountable for compliance with Federal statute, regulation, and requirements associated with the SBIR and STTR programs. In addition, the final rule corrects the following in the proposed rule: Revises the section numbering of the prescription identified in NFS 1832.12 of the proposed rule from NFS 1832.1200 to NFS 1819.7302(f); revises the numbering of the clause from NFS 1852.232-83 in the proposed rule to NFS 1852.219-85 in the final rule; makes minor revisions to conform clause titles with those in the clause prescriptions; revises the Supplementary Information, Paragraph B. Regulatory Flexibility Act to expand the justification that the rule does not have a significant economic impact on small entities; and makes other minor editorial corrections.

**DATES:** *Effective Date:* October 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Seppi, NASA, Office of Procurement, Contract Management Division, (202) 358-0447, e-mail: [Marilyn.Seppi-1@nasa.gov](mailto:Marilyn.Seppi-1@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

NASA published a proposed rule in the **Federal Register** on September 30, 2005 (70 FR 57240-57242). The public comment period ended on November 29, 2005. One public comment was received. The comment stated that the proposed rule constituted an undue burden and would have a significant (adverse) impact on small businesses. The respondent also objected to long-standing SBIR/STTR program requirements relating to limitations on subcontracting. NASA's Response: Regarding the issue of additional burden, NASA believes that it is in the Government's best interest to implement the proposed rule requiring SBIR/STTR contractors to recertify their compliance with Program requirements prior to final payment to hold contractors accountable for Program compliance and to enable the pursuit of criminal and civil cases when noncompliance constitutes a fraud against the Government. NASA believes that the additional burden resulting from the recertification statement requirement is minimal. The respondent's comment objecting to current SBIR/STTR program requirements relating to limitations on subcontracting is noted; however, these are existing program requirements that apply regardless of this rule. Therefore, this final rule amends NASA FAR

Supplement Parts 1819 and 1852 to require that all research and development contracts awarded under the SBIR and STTR Programs include the clause at 1852.219-85, Conditions for Final Payment—SBIR and STTR Contracts. This clause provides direction to the contractor regarding completion and submission of a recertification requirement prior to and as a condition of final payment. In addition, the rule requires use of the clauses at 1852.219-80, Limitation on Subcontracting—SBIR Phase I Program, 1852.219-81, Limitation on Subcontracting—SBIR Phase II Program, and 1852.219-82, Limitation on Subcontracting—STTR Program, in the respective SBIR and STTR contracts to delineate the subcontracting limitations necessary for contract performance. The rule also requires the use of clauses at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, and 1852.219-84, Limitation of the Principal Investigator—STTR Program, respectively, to describe the employment requirements of the principal investigator.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

NASA certifies that this 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 the recertification prior to final payment to awardees is merely an updated statement by the contractor provided in the representations and certifications submitted with the proposal in accordance with the Small Business Administration's SBIR Program Directive. The information included in the contractor's statement addresses subcontracting limitations and contracting officer consent requirements which are part of a contractor's normal contract administration responsibilities in monitoring compliance with contract and program requirements. Accordingly, the recertification is not considered to have a significant impact.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the changes to the NFS impose recordkeeping or information collections, or collection of information from offerors or contractors. The Office of Management and Budget under 44

U.S.C. 3501, *et seq.*, has approved this as a new collection under OMB Control Number 2700-0124.

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

Government procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

■ Accordingly, 48 CFR parts 1819 and 1852 are 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).

#### PART 1819—SMALL BUSINESS PROGRAMS

■ 2. Add Subpart 1819.73 to read as follows:

##### **Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs 1819.7301 Scope of subpart.**

Sec.

1819.7301 Scope of subpart.

1819.7302 NASA contract clauses.

##### **Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs**

##### **1819.7301 Scope of subpart.**

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of the Small Business Act codified at 15 U.S.C. 631, as amended, and the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), codified with amendments at 15 U.S.C. 638. The Small Business Act requires that the Small Business Administration (SBA) issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51-percent owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies

participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by the SBA Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

##### **1819.7302 NASA contract clauses.**

(a) Contracting officers shall insert the clause at 1852.219-80, Limitation on Subcontracting—SBIR Phase I Program, in all Phase I contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(b) Contracting officers shall insert the clause at 1852.219-81, Limitation on Subcontracting—SBIR Phase II Program, in all Phase II contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert the clause at 1852.219-82, Limitation on Subcontracting—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(d) Contracting officers shall insert the clause at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(e) Contracting officers shall insert the clause at 1852.219-84, Limitation of the Principal Investigator—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(f) Contracting officers shall insert the clause at 1852.219-85, Conditions for Final Payment—SBIR and STTR Contracts, in all contracts awarded under the Small Business Technology Transfer (STTR) Program and in all Phase I and Phase II contracts awarded under the Small Business Technology Transfer (STTR) Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

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

■ 3. Add sections 1852.219-80, 1852.219-81, 1852.219-82, 1852.219-83, 1852.219-84, and 1852.219-85 to read as follows:

##### **1852.219-80 Limitation on Subcontracting—SBIR Phase I Program.**

As prescribed in 1819.7302(a), insert the following clause:

##### **Limitation on Subcontracting—SBIR Phase I Program(Oct 2006)**

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

##### **1852.219-81 Limitation on Subcontracting—SBIR Phase II Program.**

As prescribed in 1819.7302(b), insert the following clause:

##### **Limitation on Subcontracting—SBIR Phase II Program (Oct 2006)**

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

##### **1852.219-82 Limitation on Subcontracting—STTR Program.**

As prescribed in 1819.7302(c), insert the following clause:

##### **Limitation on Subcontracting—STTR Program(Oct 2006)**

The Contractor shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

##### **1852.219-83 Limitation of the Principal Investigator—SBIR Program.**

As prescribed in 1819.7302(d), insert the following clause:

**Limitation of the Principal Investigator—SBIR Program(Oct 2006)**

The primary employment of the principal investigator (PI) shall be with the small business concern (SBC)/Contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is *(insert name)*.

(End of Clause)

**1852.219–84 Limitation of the Principal Investigator—STTR Program.**

As prescribed in 1819.7302(e), insert the following clause:

**Limitation of the Principal Investigator—STTR Program (Oct 2006)**

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the

employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is *(insert name)*.

(End of Clause)

**1852.219–85 Conditions for Final Payment—SBIR and STTR Contracts.**

As prescribed in 1819.7302(f), insert the following clause:

**Conditions for Final Payment—SBIR AND STTR Contracts(Oct 2006)**

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;
2. No other Federal funding award has been received for essentially equivalent work performed under this contract;
3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;

4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by

the Contracting Officer on *(insert date of approval or modification number)*;

5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;

6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on *(insert date of approval or modification number)*; and

7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on *(insert date of approval or modification number)*.

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 USC, Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of Clause)

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