

§ 1274.106

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process, for which the total NASA resources to be expended equal or exceed \$10 million (cash plus non-cash contributions), a notification shall immediately be provided to the Assistant Administrator for Procurement (Code HS). The notification(s) shall be forwarded by the cognizant Headquarters program office or the Center procurement office (as applicable). For any CAN where NASA's *cash* contributions are expected to equal or exceed \$10 million, Headquarters program office or Center procurement personnel shall also notify the Assistant Administrator for Small and Disadvantaged Business Utilization (Code K). All such notifications, as described in paragraph (b) of this section, shall evidence concurrence by the cognizant Center Procurement Officer. These review requirements also apply where an unsolicited proposal is received from a commercial firm (or from a team of recipients where one of more team members is a commercial firm), and the planned award document is a cooperative agreement.

(b) The notification shall be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: *can@hq.nasa.gov*. The notification must include the following information, as a minimum—

- (1) Identification of the cognizant Center and program office;
- (2) Description of the proposed program for which proposals are to be solicited;
- (3) Rationale for decision to use a CAN rather than other types of solicitations;
- (4) The amount of Government funding to be available for award(s);
- (5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;
- (6) The percentage of cost-sharing to be required;
- (7) Tentative schedule for release of CAN and award of cooperative agreements;
- (8) If the term of the cooperative agreement is anticipated to exceed 3 years and/or if the Government cash contribution is expected to exceed \$20M, address anticipated changes, if

any, to the provisions (see §1274.207); and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (e.g., provision of space and aeronautics systems, flight and ground systems, technologies and operations), a statement that the requirements of NASA Policy Directive (NPD) 7120.4 and NASA Policy Guidance (NPG) 7120.5 have been met. This affirmative statement will include a specific reference to the signed Program Commitment Agreement.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer and the Office of Small and Disadvantaged Business Utilization, within five (5) working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described,

(2) Whether Code HS will require review and approval of the CAN before its issuance,

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)),

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or Center may proceed with release of the CAN and award of the cooperative agreements as described.

(e) Before issuance, each field-generated CAN shall be approved by the installation director or designee, with the concurrence of the procurement officer. Each Headquarters generated CAN shall be approved by the cognizant Program Associate Administrator or designee, with concurrence of the Headquarters Offices of General Counsel (Code GK), External Relations (Code I), Safety & Mission Assurance (Code Q), and Procurement (Code HS).

§ 1274.106 Deviations.

(a) The Assistant Administrator for Procurement may grant exceptions for

classes of, or individual cooperative agreements and deviations from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this regulation, but not prescribed for use verbatim, and the installation substitutes a provision which is inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this regulation, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum—

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought;

(2) Detailed rationale for the request, including any pertinent background information;

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request(s); and

(5) A copy of legal counsel's concurrence or comments.

§ 1274.107 Publication of requirements.

Cooperative agreements may result from recipient proposals submitted in response to the publication of a NASA Research Announcement (NRA), a Cooperative Agreement Notice (CAN), or other Broad Agency Announcement (BAA). BAA's, NRA's and CAN's are normally promulgated through publicly accessible Government-wide announcements such as those published

under the Federal Business Opportunities (FedBizOpps), and/or the NASA Acquisition Internet Service (NAIS). Prior to publicizing the CAN, see § 1274.105.

Subpart 1274.2—Pre-Award Requirements

§ 1274.201 Purpose.

This subpart provides pre-award guidance, prescribes forms and instructions, and addresses other pre-award matters.

§ 1274.202 Methods of award.

(a) *Competitive agreements.* Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible.

(b) *Awards using other than competitive procedures.* Solicitations for award of a Cooperative Agreement shall not be issued to, nor negotiations conducted with a single source unless—

(1) Use of such actions is documented in writing; and

(2) Concurrence and approvals are obtained. The dollar thresholds will be determined by the total value of the resources committed to the Cooperative Agreement (cash and quantifiable in-kind contributions).

§ 1274.203 Solicitations/cooperative agreement notices.

(a) Agreement officers should use every effort to issue draft pre-award cooperative agreement information. Any draft documentation released for comment shall contain all factors/sub-factors. Draft documents should be as close to the final product as possible. Draft Cooperative Agreement Notices (CAN's) or Cooperative Agreements (CA) should include terms and conditions, special requirements and expected cash and non-cash (in-kind) contributions.

(1) Publication of draft documentation may serve to prevent unnecessary expenditure of resources and unproductive time that may be spent by NASA and potential recipients. Release of draft documentation also serves to assist NASA in refining program objectives and requirements, and maximizes