

fiscal years. In other circumstances, incremental funding may be appropriate. The total amount of funds obligated during the course of a fiscal year must be sufficient to cover the Government's share of the costs anticipated to be incurred by the recipient during that fiscal year. NASA may allot funds to an agreement at various times during a fiscal year in anticipation of the occurrence of costs. However, there must always be sufficient funds obligated to cover all milestone payments expected to be made during the current fiscal year.

(f) *Profit applicability.* Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors.

(g) *Independent Research and Development (IR&D) costs.* When determining the applicable dollar amounts or reasonableness of proposed IR&D costs to be included as part of the recipient's cost share, agreement officers should seek assistance from DCAA or the cognizant audit agency.

(1) In accordance with FAR 31.205-18(e), IR&D costs may include costs contributed by contractors in performing cooperative research and development agreements or similar arrangements, entered into under sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6)). IR&D costs incurred by a contractor pursuant to these types of cooperative agreements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(2) IR&D costs (or an agreed upon portion of IR&D costs) incurred by the recipient's organization and deemed by NASA as the same type of research being undertaken by the cooperative agreement between NASA and the recipient may serve as part of the recipient's contribution of shared costs

under the cooperative agreement. When considering the use of IR&D costs as part of the recipient's cost share, the IR&D costs offered by the recipient shall meet the requirements of FAR 31.205-18. Any IR&D costs incurred in a prior period, and offered as part of the recipient's cost share shall meet the criteria established by FAR 31.205-18(d), Deferred IR&D Costs.

#### § 1274.205 Consortia as recipients.

(a) The use of consortia as recipients for cooperative agreements is encouraged. Such arrangements tend to bring a broader range of capabilities and resources to the cooperative agreement. In addition, consortium members can better share the projects financial costs (e.g., the 50 percent recipient's cost share or other costs of performance).

(b) NASA enters into an agreement with only one entity (as identified by the consortium members). (Also see § 1274.940.) The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(c) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. The Articles of Collaboration must designate a lead firm to represent the consortium and authority to sign on the consortium's behalf. It should also address to the extent appropriate—

- (1) Commitments of financial, personnel, facilities and other resources;
- (2) A detailed milestone chart of consortium activities;
- (3) Accounting requirements;
- (4) Subcontracting procedures;
- (5) Disputes;
- (6) Term of the agreement;
- (7) Insurance and liability issues;
- (8) Internal and external reporting requirements;
- (9) Management structure of the consortium;
- (10) Obligations of organizations withdrawing from the consortia;

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(11) Allocation of data and patent rights among the consortia members

(12) Agreements, if any, to share existing technology and data;

(13) The firm that is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, and address employee policy or other personnel issues.

(d) The consortium's charter or by-laws may be substituted for the Articles of Collaboration only if they are inclusive of all of the required information.

(e) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process. Articles of Collaboration do not become part of the resulting cooperative agreement.

### § 1274.206 Metric Conversion Act.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. NASA's policy with respect to the metric measurement system is stated in NPD 8010.2, Use of the Metric System of Measurement in NASA Programs.

### § 1274.207 Extended agreements.

(a) Multiple year cooperative agreements are encouraged, but normally they should span no more than three years.

(b) Cooperative agreements that will exceed \$5 million and have a period of performance in excess of 5 years shall require the approval of the Assistant Administrator for Procurement prior to award. Requests for approval shall include a justification for exceeding 5 years and evidence that the extended years can be reasonably priced. Requests for approval are not required when the 5-year limitation is exceeded due to a no cost extension.

(c) Cooperative agreement renewals provide for the continuation of research beyond the original scope, period of performance and funding levels; therefore, new proposals, certifications, and technical evaluations are required prior to the execution of a co-

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operative agreement renewal. Renewals will be awarded as new cooperative agreements. Continued performance within a period specified under a multiple year cooperative agreement provision does not constitute a renewal.

(d) The provisions set forth in § 1274.901 are generally considered appropriate for agreements not exceeding 3 years and/or a Government cash contribution not exceeding \$20M. For cooperative agreements expected to be longer than 3 years and/or involve Government cash contributions exceeding \$20M, consideration should be given to provisions which place additional restrictions on the recipient in terms of validating performance and accounting for funds expended.

[67 FR 45790, July 10, 2002, as amended at 68 FR 14535, Mar. 26, 2003]

### § 1274.208 Intellectual property.

(a) *Intellectual property rights.* A cooperative agreement covers the disposition of rights to intellectual property between NASA and the recipient. If the recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) *Rights in patents.* Patent rights clauses are required by statute and regulation. The clauses exist for recipients of the agreement whether they are—

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) *Inventions.* There are five situations in which inventions may arise under a cooperative agreement—

(1) Recipient Inventions;

(2) Subcontractor Inventions;

(3) NASA Inventions;

(4) NASA Support Contractor Inventions; and

(5) Joint Inventions with Recipient.

(d) *Recipient inventions.* (1) A recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes