

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 547 and 552

[GSAR Amendment 2009–06; GSAR Case 2006–G518 (Change 34); Docket 2008–0007; Sequence 2]

RIN 3090–AI52

### General Services Administration Acquisition Regulation; GSAR Case 2006–G518; Rewrite of GSAR Part 547, Transportation

**AGENCIES:** General Services Administration (GSA), Office of the Chief Acquisition Officer.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by deleting and reserving Part 547, Transportation.

**DATES:** *Effective Date:* June 29, 2009

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2009–06, GSAR case 2008–G518 (Change 34).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

GSA published a proposed rule, with request for comments, in the **Federal Register** at 73 FR 32277 on June 6, 2008. No comments were received in response to the proposed rule. Therefore, the proposed rule is converted to final with no change. The information contained in Subpart 547.3—Transportation in Supply Contracts, sections 547.300, 547.303, 547.304, 547.305, and 547.370, is being deleted. In addition, clauses 552.247–70, Placarding Railcar Shipments, and 552.247–71, Diversion of Shipment Under f.o.b. Destination Contracts, are being deleted from 552.547.

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

The General Services Administration certifies that this final 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 rule deletes information and clauses that are deemed unnecessary and therefore, has no impact.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

##### List of Subjects in 48 CFR Parts 547 and 552

Government procurement.

Dated: March 6, 2009.

**Rodney P. Lantier,**

*Acting, Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

■ Therefore, under the authority of 40 U.S.C. 121(c), GSA amends 48 CFR parts 547 and 552 as set forth below:

##### PART—547 [Removed and Reserved]

- 1. Remove and reserve part 547.
- 2. The authority citation for 48 CFR part 552 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

##### PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 552.247–70 [Removed]

- 3. Remove section 552.247–70.

##### 552.247–71 [Removed]

- 4. Remove section 552.247–71.  
[FR Doc. E9–12362 Filed 5–28–09; 8:45 am]

**BILLING CODE 6820–61–S**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1819 and 1852

RIN 2700–AD41

#### NASA Mentor-Protégé Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) to update the procedures for NASA's Mentor-Protégé program. The changes will streamline the program; align the mentoring to technical skills; expand the program to Veteran-owned, HUBZone, and NASA Small Business

Innovation Research (SBIR) Phase II small businesses; and include award fee incentives.

**DATES:** *Effective date:* May 29, 2009.

*Applicability date:* NASA's revised procedures for the Mentor-Protégé program will be effective for new applications that are submitted on or after May 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sandra Morris, Office of Procurement, Contract Management Division, (202) 358–0532; e-mail: [Sandra.Morris@nasa.gov](mailto:Sandra.Morris@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On September 19, 2008, the National Aeronautics and Space Administration (NASA) published in the **Federal Register** (73 FR 54340–54345), a proposed rule, with request for comments, to amend its regulations governing the NASA Mentor-Protégé Program. This program is authorized under Title 42, U.S.C., 2473(c)(1). Specifically, the proposed rule defined the new program's eligibility requirements, and agreement submission and approval process. It also introduced mentor award fee incentives and explained the calculated subcontracting credit pursuant to FAR 52.219–9, Small Business Subcontracting Plan.

##### *Discussion of Comments on the Proposed Rule*

The comment period for the proposed rule closed on November 18, 2008. NASA received substantive comments from eight commenters. One of the commenters opposed NASA's approach to implementation of the proposed rule, and the remaining seven supported it.

The commenter who opposed NASA's approach as set forth in the proposed rule felt that there are already adequate numbers of specialized programs for various small businesses, and stated that they adversely impact the opportunities for regular small business entities. Of the seven commenters who generally supported the proposed rule, about half sought to be included in the mentoring program or requested referrals, and the other half requested that specific language be added to the rule.

Based on NASA's evaluation of the comments and the purpose of the rule, NASA modified the proposed rule in response to issues raised in the comments. As discussed below, this final rule provides definitions and clarifications of NASA's Mentor Protégé program. The following is an analysis of the substantive comments and NASA's corresponding responses.

### Requirements To Qualify as a Protégé

Three of the commenters expressed the view that the proposed eligibility requirements in section 1819.7202(b) Eligibility of Protégés, should be expanded to include non-profit agencies for the blind or a qualified nonprofit agency for the severely disabled. The suggestion was made to add the following under paragraph (b)(1) “or a qualified non-profit agency for the blind or a qualified nonprofit agency for other severely disabled as defined in 41 CFR 51-4 under the Ability One Program.”

*Response:* NASA has modified section 1819.7202 “Eligibility” by adding under paragraph (b)(1) “Eligibility of Protégé, nonprofit agencies employing people who are blind or severely disabled”.

### Award Fee

One commenter asked for additional clarification regarding award fees. According to this commenter, the new rule appears to eliminate the existing award fee provisions and introduces a new award fee incentive for companies which mentor SBIR II protégé firms. The commenter states that 1819.7215(b)(4) provides that “[i]n contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7209.” The commenter further notes that the new 1819.7209 addresses credit agreements and reimbursement of certain costs associated with providing developmental assistance, and asks whether award fees will be limited to arrangements with SBIR II companies, or if preexisting award fees will still be available. Could the agency mean that when a prime contract contains an award fee incentive, participation as a mentor will be favorably factored into the award fee determination?

*Response:* The correct citation for the referenced language is 1852.219-77 rather than 1819.7215(b)(4). The award fee evaluation criteria as stated in NFS 1816.405-274(g)(3) remains unchanged. NFS 1816.405-274(g)(3) states that the contractor’s achievements in subcontracting high technology efforts as well as the contractor’s performance under the Mentor-Protégé Program may be evaluated.

In addition to the award fee evaluation criteria stated in NFS 1816.405-274(g)(3), the new Mentor-Protégé program in 1819.7208 has been added and applies when the protégé is a NASA SBIR Phase II contractor.

### DOD Mentor-Protégé Reciprocity

Another commenter asks whether reciprocity to the DOD Mentor-Protégé

program would be eliminated under the proposed rule.

*Response:* This rule removes the DOD reciprocity previously referenced in 1819.7204 “Transportability of features from the Department of Defense (DOD) Mentor-Protégé Program to NASA contractors”.

### Self-Certification

One commenter requested confirmation that protégé companies will no longer be allowed to self-certify.

*Response:* Protégé companies are still allowed to self-certify.

### Protégé Selection Process

A commenter asked NASA to confirm the change that mentors would be required to select protégé companies that are SDBs, WOSB, HUBZone SBs, VO/SDVO SBs, HBCUs, MIs or SBIR II companies. The preexisting rule stated that it would “encourage” as opposed to “require” this selection.

*Response:* Eligible protégé companies must be one of the types of companies listed in section 1819.7202. In response to comments received, NASA has added nonprofit agencies employing people who are blind or severely disabled to the list of eligible protégés.

### SBIR Phase II Protégé

One commenter states that because the rule requires that companies under the award fee pilot have already been selected for SBIR Phase II contracts with NASA, it does not explain how a prime contractor mentor subcontracts with a SBIR II protégé, which is a prime contractor in its own right.

*Response:* The SBIR Phase II contractor can hold the SBIR

Phase II contract and be eligible for developmental assistance in the form of noncompetitive award of subcontracts under NASA contracts in accordance with 1819.7205(c)(2).

### B. Regulatory Flexibility Act

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

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is applicable because the NFS changes impose information collection requirements in the form of applications and report submissions.

The information collection has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* via control number 2007-0078.

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

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1819 and 1852 are 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. Subpart 1819-72 is revised to read as follows:

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

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

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

##### 1819.7201 Scope of subpart.

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

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

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

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

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with

eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives. Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219-9, Small Business Subcontracting Plan.

**1819.7202 Eligibility.**

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

(1) A large prime contractor performing under contracts with at least one approved subcontracting plan negotiated with NASA, pursuant to FAR Subpart 19.7, The Small Business Subcontracting Program. A contractor may apply to become a mentor even if they currently are not performing under a NASA contract with an approved subcontracting plan, if they are currently performing for another Federal Agency under a contract with an approved subcontracting plan. A NASA mentor-protégé agreement will not be approved until such time the mentor company is performing under a NASA contract with an approved subcontracting plan; and

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

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

(1) Be classified as a Small Disadvantaged Business (SDB), a women-owned small business, a HUBZone small business, a veteran-owned or service-disabled veteran-owned small business, an historically black college and university, minority institution of higher education, as defined in FAR Part 2, Definitions of Parts and Terms, an active NASA SBIR Phase II company, or a non-profit agency employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

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

(3) Be a small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be

provided by the protégé to the mentor if the protégé is representing itself as a women-owned small business, HUBZone small business, or a veteran-owned or service-disabled veteran-owned small business.

(4) Except for SDBs, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

**1819.7203 Mentor approval process.**

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

(b) The application must provide the following information:

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

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

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

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

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

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

(7) The total dollar amount and percentage of subcontracts that the entity awarded to all SDB, women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges, and Universities, minority institutions of higher education and nonprofit

agencies employing people who are blind and severely disabled under NASA contracts and other Federal agency contracts during the two preceding fiscal years. If the entity is presently required to submit a Summary Subcontracting Report via the Government Electronic Subcontracting Reporting System (eSRS), the application must include copies of the final reports for the two preceding fiscal years.

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

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

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

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

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

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

**1819.7204 Protégé selection.**

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

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

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

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

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

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

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

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

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

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

#### 1819.7205 Mentor-protégé agreements.

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

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

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

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

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

(ii) Engineering, environmental and technical matters; and

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

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

(3) Advance payments under such subcontracts. The mentor must administer advance payments when first

approved by NASA in accordance with FAR Subpart 32.4, Advance Payments for Non-Commercial Items.

(4) Loans.

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

Investments may include, but are not limited to, cash, stock, and contributions in kind.

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

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

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

(iii) Historically Black Colleges and Universities.

(iv) Minority institutions of higher education.

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

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

#### 1819.7206 Agreement contents.

Each mentor-protégé agreement will contain the following elements:

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

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

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

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

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

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

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

(2) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

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

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

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

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

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

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

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

#### 1819.7207 Agreement submission and approval process.

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

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

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

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

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

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

**1819.7208 Award Fee Pilot Program.**

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

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans.

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

- (1) Active participation in the Program;
- (2) The amount and quality of developmental assistance provided;
- (3) Subcontracts awarded to small businesses and others;
- (4) Success of the protégés in increasing their business as a result of receiving developmental assistance; and
- (5) Accomplishment of any other activity as related to the mentor-protégé relationship.

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

**1819.7209 Credit agreements.**

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

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

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

(3) The amount of credit a mentor may receive for developmental

assistance costs must be reported on a one-to-one basis for all dollars spent.

**1819.7210 Agreement terminations.**

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

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

**1819.7211 Loss of eligibility.**

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

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

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

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

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

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

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

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

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

**1819.7212 Reporting requirements.**

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

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

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

(1) Expenditures by the mentor.

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

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

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

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

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

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

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

**1819.7213 Performance reviews.**

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

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

(2) The mentor's and protégé's reported progress made by the protégé in employment, revenues, and

participation in NASA contracts during the program participation term.

**1819.7214 Measurement of program success.**

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

(1) An increase in the number and dollar value of contracts and subcontract awards to protégés (under NASA contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the program until two years after the conclusion of the agreement;

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

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

**1819.7215 Solicitation provision and contract clauses.**

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

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

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

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

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

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

As prescribed in 1819.7215, insert the following clause:

NASA Mentor-Protégé Program (Month/Year)

(a) Prime contractors are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

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

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, meeting the qualifications defined in FAR Part 2, Definitions of Parts and Term, active NASA SBIR Phase II companies or nonprofit agencies employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

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

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7208.

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

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

(End of clause)

**1852.219-79 Mentor Requirements and Evaluation.**

As prescribed in 1819.7215, insert the following clause:

Mentor Requirements and Evaluation (Month/Year)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés.

Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns,

veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, as defined in FAR Part 2, Definitions of Parts and Terms, active NASA SBIR Phase II companies and nonprofit agencies employing the blind or severely handicapped as defined in 41 CFR Chapter 51.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

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

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

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

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

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

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

(e) At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments, as it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by

delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort

should the agreement be terminated shall be submitted with the agreement.

(End of clause)

[FR Doc. E9-12487 Filed 5-28-09; 8:45 am]

**BILLING CODE 7510-01-P**