

2019–D043, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “DFARS Case 2019–D043.” Select “Comment” and follow the instructions provided to submit a comment. Please include “DFARS Case 2019–D043” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2019–D043 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Mr. David E. Johnson, telephone 202–913–5764.

**SUPPLEMENTARY INFORMATION:** DoD is interested in continuing a dialogue with experts and interested parties in Government and the private sector regarding amending the DFARS to implement the Small Business Administration’s Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) Program Policy Directive. DoD held a public meeting on February 2, 2023, regarding this proposed rule.

*Registration:* Individuals wishing to participate in the virtual meeting must register by February 23, 2023, to facilitate entry to the meeting. Interested parties may register for the meeting by sending the following information via email to [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil) and including “Public Meeting, DFARS Case 2019–D043” in the subject line of the message:

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.
- Whether the individual desires to make a presentation.

Preregistered individuals will receive instructions for connecting using the Zoom video conferencing software not more than one week before the meeting is scheduled to commence.

*Presentations:* Presentations will be limited to 5 minutes per company or organization. This limit may be subject to adjustment, depending on the number of entities requesting to present, to ensure adequate time for discussion.

If you wish to make a presentation, please submit an electronic copy of your presentation via email to [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil) no later than the registration date for the specific meeting. Each presentation should be in PowerPoint to facilitate projection during the public meeting and should include the presenter’s name, title, organization affiliation, telephone number, and email address on the cover page.

*Correspondence, Comments, and Presentations:* Please cite “Public Meeting, DFARS Case 2019–D043” in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be the only record of the public meeting and will be posted to the following website at the conclusion of the public meeting: [https://www.acq.osd.mil/dpap/dars/technical\\_data\\_rights.html](https://www.acq.osd.mil/dpap/dars/technical_data_rights.html).

The comment period for the proposed rule is extended through March 20, 2023, to provide additional time for interested parties to provide inputs.

#### **List of Subjects in 48 CFR Parts 212, 227, and 252**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

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**BILLING CODE 5001–06–P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **48 CFR Parts 1819 and 1852**

**RIN 2700–AE38**

#### **NASA Federal Acquisition Regulation Supplement: NASA Mentor-Protégé Program**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to reflect updates to NASA’s Mentor Protégé Program (MPP) including: the requirement of Small Business Specialists’ concurrence on the signed letter of endorsement; requirements associated with credit received towards subcontracting goals; the change of the MPP reporting requirement from semi-annually to annually; identified the NASA Mentor Protégé Program Office; and clerical, semantic improvements. NASA also proposes to amend the NFS language to reflect the annual

negotiation of its small business percentage goals. Lastly, the NFS will be amended to emphasize collaboration amongst representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices to reduce barriers to entry and to opportunities for all small business concerns and Historically Black Colleges and Universities or Minority Institutions.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 17, 2023, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by NFS Case 2022–N018, Mentor Protégé Program using any of the following methods:

○ *Regulations.gov:* <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “NFS Case 2022–N018” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “NFS Case 2022–N018” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “NFS Case 2022–N018” on your attached document.

○ *Email:* [R.todd.lacks@nasa.gov](mailto:R.todd.lacks@nasa.gov).

Include NFS Case 2022–N018 in the subject line of the message.

○ *Mail:* National Aeronautics and Space Administration, Headquarters, Office of Procurement Management and Policy Division, Attn: Todd Lacks, LP–011, 300 E Street SW, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** R. Todd Lacks, NASA HQ, Office of Procurement Management and Policy Division, LP–011, 300 E Street SW, Washington, DC 20456–0001. Telephone 202–358–0799 and; facsimile 202–358–3082.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

NASA is proposing to revise the NFS to add new text that: requires concurrence of the Small Business Specialist on the signed letter of endorsement for the MPP; adds requirements associated with credit received towards subcontracting goals; changes the reporting requirement from semi-annually to annually; and makes clerical and other semantic improvements.

##### **II. Discussion**

NFS parts 1819, Small Business Programs, and 1852, Solicitation Provisions and Contract Clauses, are

implement updates to NASA's MPP at the request of the program's administering office, NASA's Office of Small Business Programs (OSBP).

### III. Applicability to Commercial Item Acquisitions, Including Commercially Available Off-the-Shelf (COTS) Items, and Acquisitions Below the Simplified Acquisition Threshold (SAT)

The objective of this proposed rule is to implement updates to NASA's MPP. Subpart 1819.72 does not limit the application of the program requirements to non-commercial contracts or contracts above the simplified acquisition threshold. Consistent with 41 U.S.C. 1905, 1906 and 1907, the NASA Assistant Administrator for Procurement has determined that it is in the best interest of NASA to apply this policy change to the acquisition of commercial items, including COTS items, and those requirements below the SAT.

### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action as defined in E.O. 12866 and therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

### V. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized below.

The proposed rule will apply to all current and future participants of the MPP. While the proposed rule will apply to all classes of small business, it will not necessarily affect all those businesses because the proposed rule only applies to those that are a part of the MPP. As reported by NASA's OSBP, NASA has entered 6, 1 and 3 mentor protégé agreements in 2018, 2019 and 2020, respectively. Therefore, this policy will have minimal impact on small businesses at large.

NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

### VI. Paperwork Reduction Act

This proposed rule contains information collection requirements requiring the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). As part of this proposed rule, NASA is also requesting comments on the reinstatement with change of a collection, OMB 2700-008, *NASA Mentor-Protégé Program Small Business and Small Disadvantaged Business Concerns Report*.

NASA, in coordination with its Office of Small Business Programs, initiated this proposed rule and is proposing to reinstate this collection to decrease the collection requirement from semi-annual to annual. NASA conducts semi-annual Mentor Protégé performance reviews, which are more effective in tracking milestones over the life of the agreement than the submission of semi-annual reports. This change will reduce the reporting requirement on small businesses from semi-annual to annual and still capture necessary information from the semi-annual performance reviews.

*Methods of Collection:* NASA uses electronic methods to collect information from collection respondents.

#### Data

*Title:* NASA Mentor-Protégé Program.

*OMB Number:* 2700-0078.

*Type of Review:* Reinstatement with change.

*Affected Public:* Small Businesses.

*Estimated Annual Number of Activities:* 1.

*Estimated Number of Respondents per Activity:* 10.

*Annual Responses:* 10.

*Estimated Time per Response:* 1.5 hrs.

*Estimated Total Annual Burden*

*Hours:* 15.

*Estimated Total Annual Cost:* \$0.

### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on respondents, including automated collection techniques or the use of other forms of information technology. Comments submitted in response to this document will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

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

Government procurement.

Erica Jones,

*NASA FAR Supplement Manager.*

Accordingly, NASA proposes to amend 48 CFR parts 1819 and 1852 as follows:

■ 1. The authority citation for parts 1819 and 1852 continue to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

### PART 1819—SMALL BUSINESS PROGRAMS

#### Subpart 1819.2—Policies

■ 2. Amend section 1819.201 by revising the section heading and paragraph (a)(ii) to read as follows:

#### 1819.201 General policy.

(a) \* \* \*

(ii) NASA annually negotiates Agency small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices will collaborate to reduce barriers to entry and to opportunities for small business concerns, identified in paragraph (a)(i) of this section, and Historically Black Colleges and Universities or Minority Institutions.

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

■ 3. Amend section 1819.7201 by:  
 ■ a. Revising paragraph (a) introductory text; and  
 ■ b. In paragraph (b), adding the acronym "(MPA)" after the words "mentor-protégé agreements".

The revision reads as follows:

#### 1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) as authorized by the Small Business Administration in accordance with 13

CFR 125.10. The purpose of the program is to:

\* \* \* \* \*

■ 4. Amend section 1819.7202 by revising paragraphs (a) and (b) to read as follows:

**1819.7202 Eligibility.**

(a) To be eligible as a mentor, an entity must be—

(1) A large business prime contractor or research institution performing with at least one approved subcontracting plan (other than a commercial plan) negotiated with NASA, pursuant to FAR subpart 19.7. A contractor may apply to become a mentor if they currently are not performing under a NASA contract, as long as they are currently performing another Federal agency contract with an approved subcontracting plan. However, the NASA MPA will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan.

(2) Eligible for receipt of Government contracts. An entity will not be approved for participation in the program if, at the time of submission of the application to the NASA Mentor Protégé Program Office (MPPPO), the entity is debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4.

(b) To be eligible to participate as a protégé, an entity must be eligible for award of Federal contracts in accordance with FAR subpart 9.4, *i.e.*, entities cannot be suspended or debarred at the time of application for the program and must be classified as one of more of the following entities or socio-economic categories as defined by FAR part 2:

- (1) Small disadvantaged business;
- (2) Women-owned small or economically disadvantaged women-owned concern;
- (3) Veteran-owned or service-disabled veteran-owned small business concern;
- (4) Historically underutilized business zone concern;
- (5) Historically Black College and University or Minority-Serving Institution;
- (6) Current NASA Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Phase II Company; or
- (7) An entity participating in the AbilityOne Program.

\* \* \* \* \*

■ 5. Revise section 1819.7203 to read as follows:

**1819.7203 Mentor-protégé advanced payments.**

If advance payments are contemplated, the mentor must first have the advance payments approved by the contracting officer in accordance with FAR subpart 32.4.

- 6. Amend section 1819.7204 by:
  - a. Revising paragraph (a) introductory text and (a)(1) and (3);
  - b. Removing paragraph (a)(4);
  - c. Redesignating paragraph (a)(5) as paragraph (a)(4);
  - d. Removing paragraph (c);
  - e. Redesignating paragraph (b) as paragraph (c); and
  - e. Adding a new paragraph (b).

The revisions and addition read as follows:

**1819.7204 Agreement submission and approval process.**

(a) To participate in the Program, entities approved as mentors, will submit a complete agreement package to the contracting officer, contracting officer's representative (COR), and the cognizant Small Business Specialist (SBS) at the NASA Center. The submission package must include the following:

- (1) A signed MPA;

\* \* \* \* \*

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

\* \* \* \* \*

(b) The NASA MPPPO may require additional information as requested upon agreement submission.

\* \* \* \* \*

- 7. Amend section 1819.7205 by:
  - a. Revising the section heading and paragraph (a);
  - b. Removing paragraph (c)(4);
  - c. Redesignating paragraphs (c)(5) and (6) as paragraphs (c)(4) and (5); and
  - d. Revising paragraph (d).

The revisions read as follows:

**1819.7205 Award Fee Program.**

(a) Mentors may be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR/STTR Phase II Protégés only. The award fee will be assessed at each award fee determination period.

\* \* \* \* \*

(d) The Award Fee Program is an addition to the credit agreement, reference 1819.7206. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

■ 8. Add section 1819.7206 to read as follows:

**1819.7206 Credit agreement.**

In a MPA (as referenced in section 6 "Agreements" of the MPP Guidebook), a mentor receives credit toward its subcontracting goals. The credit agreement only applies to mentors with an Individual Subcontract Plan.

(a) Costs incurred under a credit agreement are applied on a one-to-one basis toward applicable subcontracting goals, under a Federal agency subcontracting plan (FAR subpart 19.7).

(b) The credit is reported on the mentor's individual subcontracting report (ISR) in the comments section twice a year and in the Summary Subcontract Report (SSR) once a year. The MPPPO will verify the dollars contained in the annual reports.

■ 9. Amend section 1819.7212 by revising paragraphs (a), (b), (c) introductory text, and (d) through (g) to read as follows:

**1819.7212 Reporting requirements.**

(a) Mentors must report on the progress made under active MPA annually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each 12-month period of performance commencing with the start of the agreement.

(c) Each annual report must include the following data on performance under the MPA:

\* \* \* \* \*

(d) Annually the protégé must provide an independently developed progress report using the annual report template, on the progress made during the prior twelve 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 annual report required by paragraph (d) of this section must be submitted separately from the mentor's annual report submission.

(f) Reports for all agreements must be submitted to the NASA Mentor Protégé Program Manager, the mentor's cognizant administrative Contracting Officer, and their Small Business Specialist.

(g) Templates for the annual report and the Post-Agreement report and guidance for their submission are available at: <https://www.nasa.gov/osbp/mentor-protege-program>.

■ 10. Add section 1819.7213 to read as follows:

**1819.7213 Reporting allowances.**

The mentor may include its developmental expenditures from the annual report, reference 1819.7212, in its reported dollars in its Summary Subcontracting Report (SSR) in the Electronic Subcontracting Reporting System (eSRS).

(a) If the protégé is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(b) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the "Remarks" section of each report.

(c) Expenditures for AbilityOne protégés cannot be included in SSR's or ISR's since there is no such reporting category for SSR's or ISR's.

■ 11. Amend section 1819.7215 by revising paragraph (a) to read as follows:

**1819.7215 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protégé Program, in any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

\* \* \* \* \*

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

■ 12. Amend section 1852.219–77 by revising the date of the clause and paragraphs (b) through (d) to read as follows:

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

\* \* \* \* \*

NASA Mentor-Protégé Program (Abbreviated Month and Year of Publication in The Federal Register)

\* \* \* \* \*

(b) The Program consists of—  
(1) Mentors, which are large business prime or research institution with at least one approved NASA subcontracting plan;

(2) Protégés, which qualify as one or more of the following:

(i) Small Business Concern, as defined in FAR part 2, Definitions of Parts and Terms, including: Women-Owned or Economically-Owned Concern; Veteran-Owned or Service-Disabled Veteran-Owned Small Business Concern;

Historically Underutilized Business Zone Concern;

(ii) Historically Black College and University or Minority-Serving Institution;

(iii) Current NASA SBIR/STTR Phase II Company; or

(iv) An Entity Participating in the AbilityOne Program;

(3) MPA endorsed by the cognizant NASA centers and approved by the NASA MPPO; and

(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 1819.7205.

(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, as well as other Federal and commercial contracts and subcontracts.

(d) Eligible businesses and research institutions interested in participating in the program are encouraged to contact the NASA MPPO.

\* \* \* \* \*

■ 13. Amend section 1852.219–79 by:

■ a. Revising the date of the clause and paragraph (a);

■ b. Removing the undesignated text following paragraph (a);

■ c. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g);

■ d. Adding a new paragraph (b);

■ e. Revising newly redesignated paragraphs (c) introductory text and (c)(3) and (4);

■ f. Removing newly redesignated paragraph (c)(5); and

■ g. Revising newly redesignated paragraphs (d) through (g).

The revisions and addition read as follows:

**1852.219–79 Mentor requirements and evaluation.**

\* \* \* \* \*

**Mentor Requirements and Evaluation (Abbreviated Month and Year of Publication in the Federal Register)**

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance 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 perform as viable NASA, other Government, and commercial suppliers on 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) The Mentor shall comply with the annual reporting requirements detailed in NASA FAR Supplement 1819.7212.

(c) NASA will evaluate the Mentor's performance on the following factors in the subcontracting element of the annual Contractor Performance Assessment Report (CPAR). If this contract includes an award fee incentive, this evaluation will also be included as part of the subcontracting element in the award fee evaluation process.

\* \* \* \* \*

(3) The extent to which the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) The extent to which the mentor has contributed to advancing the protégé's technical readiness level. This factor only applies if the protégé is a current NASA SBIR/STTR Phase II contractor.

(d) Annual reports shall be submitted by the Mentor and the Protégé to the MPPO, following the annual report template found on the website at [www.nasa.gov/osbp](http://www.nasa.gov/osbp).

(1) Except for as noted in paragraph (d)(4) of this section, the Mentor may include its developmental expenditures from the annual report, reference 1819.7212, Reporting Requirements, in its reported dollars in its Summary Subcontracting Report (SSR) in eSRS.

(2) If the protégé is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the Mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(3) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the "Remarks" section of each report.

(4) Expenditures for AbilityOne protégés cannot be included in SSR's or ISR's, since there is no such reporting category for SSR's or ISR's.

(e) 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.

(f) Every six months, the Mentor and Protégé, as appropriate, will formally brief the MPPO, and the contracting officer during a formal program review regarding program accomplishments, as it pertains to the approved agreement.

(g) NASA may terminate MPA for good cause, thereby excluding mentors or protégés from participating in the program. These actions shall be approved by the MPPO. 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.

\* \* \* \* \*

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