

inconsistent with the requirements of this Regulation shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.104.

§ 1274.104 Deviations.

(a) The Associate Administrator for Procurement may grant exceptions for classes of or individual cooperative agreements from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) *Applicability.* 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) *Request for deviations.* 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).

(5) A description of the intended effect of the deviation.

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

§ 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

(a) As soon as possible after the initial decision is made by program or procurement personnel to use the CAN process, the cognizant program office or procurement office, shall notify the

Associate Administrator for Procurement (Code HS), of the intent to use a CAN in all cases where the total Government funds to be awarded in response to CAN proposals is expected to equal or exceed \$10 million. All such notifications, as described below, shall be concurred in by the Procurement Officer. This requirement also applies in those cases where an unsolicited proposal is received and a decision is made to award a cooperative agreement in which the recipient (or one or more of a "team" of recipients) is a commercial firm and the total Government funds are expected to equal or exceed \$10 million.

(b) The required notification is to be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: can@mercury.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 awards,

(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, and

(7) Tentative schedule for release of CAN and award of cooperative agreements

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer, within 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, intellectual property, etc.)), and

(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.

Subpart B—Pre-Award Requirements

§ 1274.201 Purpose.

Sections 1274.202 through 1274.207 prescribe forms and instructions and addresses other pre-award matters.

§ 1274.202 Solicitations and proposals.

(a) Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible. An award will normally be made as a result of a Cooperative Agreement Notice (CAN) which envisions a cooperative agreement as the award instrument. A Commerce Business Daily synopsis will be used to publicize the CAN.

(b) *Unsolicited proposals.*

(1) An award may be made as a result of an unsolicited proposal. The unsolicited proposal must evidence a unique and innovative idea or approach which is not the subject of a current or anticipated solicitation. When a cooperative agreement is awarded as a result of an unsolicited proposal, a Commerce Business Daily synopsis must be published to provide an opportunity for other firms/consortia to express an interest in the agreement unless the exception in 48 CFR (FAR) 5.202(a)(8) applies. Respondents should be given a minimum of thirty days to respond. If interest is expressed, a decision must be made to proceed with the award or to issue a solicitation for competitive proposals.

(2) Prior to an award made as the result of an unsolicited proposal, the award must be approved by the Procurement Officer if NASA's total resource contribution is below \$5 million. Center Director approval is required if NASA's total resource contribution is \$5 million or more. For Headquarters cooperative agreements, approval by the Associate Administrator for Procurement is required if NASA's total resource contribution is \$5 million or more.

(c) *Cost and payment matters*

(1) The allowability of costs incurred by the recipient is determined in accordance with 48 CFR (FAR) Part 31, "Contract Cost Principles and Procedures."

(2) Cost sharing. A substantial resource contribution on the part of the Recipient is required. The Recipient is expected to contribute at least 50% of the total resources required to accomplish the cooperative agreement. Recipient contributions may be in either cash or in-kind or both. In those cases in which a contribution of less than 50% is anticipated from the Recipient, approval of the Associate Administrator for Procurement (Code HS) is required