

§ 1274.201

(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,

(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 1274.202(f)), and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (*i.e.*, provide space and aeronautics, 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 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.)), 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 noti-

14 CFR Ch. V (1-1-01 Edition)

fication, 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 address other pre-award matters.

§ 1274.202 Solicitations and proposals.

(a) *Competition.* 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 or a synopsis on the NASA Acquisition Internet Service 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 and a synopsis on the NASA Acquisition Internet Service will be used 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 expenditure of Government funds by the recipient and the allowability of costs recognized as a resource contribution by the recipient shall be governed by the FAR cost principles, 48 CFR part 31. If the recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows:

(i) Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments."

(ii) The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

(iii) The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions."

(iv) The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(2) A substantial resource contribution on the part of the recipient is required. The recipient is expected to contribute at least 50 percent of the total resources required to accomplish the cooperative agreement. Recipient contributions may be either cash or non-cash or both. In those cases in which a contribution of less than 50 percent is anticipated from the recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives

to such a degree that a share ratio of less than 50 percent is warranted.

(3) Cooperative agreements are funded by NASA in a fixed amount. Payments in fixed amounts will be made by NASA in accordance with "Milestone Billings" which are discussed in paragraph (c)(4) of this section. If the recipient completes the final milestone, final payment is made, and NASA will have completed its financial responsibilities under the agreement. However, if the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding will be limited to milestone payments already made plus NASA's share of costs required by the recipient to meet commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event shall these additional costs or payment exceed the amount of the next payable milestone billing amount.

(4) Milestone billings is the method of payment to the recipient under cooperative agreements. Performance based milestones are used as the basis of establishing a set of verifiable milestones for payment purposes. Each milestone payment shall be established so that the Government payment is at the same share ratio as the cooperative agreement share ratio. If the recipient is a consortium, the Articles of Collaboration is required to contain an extensive list of performance based milestones that the consortium has agreed to. Generally, payments should not be made more than once monthly; ideally, payments will be made about every 60 to 90 days but in all cases should be made on the basis of verifiable, significant events as opposed to the passage of time. The last payment milestone should be large enough to ensure that the recipient completes its responsibilities under the cooperative agreement (or funds should be reserved for payment until after completion of the cooperative agreement). The Government technical officer must verify completion of each milestone to the Grant Officer as part of the payment process.

(5) Cooperative agreements may be incrementally funded subject to the following: