



This document is scheduled to be published in the Federal Register on 07/26/2016 and available online at <http://federalregister.gov/a/2016-17559>, and on FDsys.gov

Billing Code 7510-13

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

RIN 2700-AE33

**NASA Federal Acquisition Regulation Supplement: Contractor
Financial Reporting of Property (2016-N024)**

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to add a monthly reporting requirement for contractors having custody of \$10 million or more in NASA-owned Property, Plant and Equipment (PP&E).

DATES: Interested parties should submit comments to NASA at the address below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by NFS Case 2016-N024, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "NFS Case 2016-N024" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NFS Case 2016-N024." Follow the instructions

provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NFS Case 2016-N024" on your attached document.

o E-mail: andrew.orourke@nasa.gov. Include NFS Case 2016-N024 in the subject line of the message.

O Fax: (202) 358-3082.

o Mail: National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: Andrew O'Rourke, LP-011 (Suite 5L32), 300 E. Street SW, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA, Office of Procurement, Contract and Grant Policy Division, LP-011 (Suite 5L32); (202) 358-4560; e-mail: andrew.orourke@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NASA is proposing to revise the NFS to add a monthly reporting requirement at 1852.245-73 for contracts in which the contractor has custody of NASA-owned PP&E valued at \$10 million or more to ensure contractor-held PP&E are more accurately represented in NASA financial statements. In accordance with the Statement of Federal Financial Accounting Standard (SFFAS) No. 6, Accounting for Property, Plant, and Equipment, Federal agencies are-

- Required to record as property and equipment all items that meet certain characteristics, such as a useful life of two (2) years or more; and
- Permitted to establish individual capitalization thresholds and useful life policies due to their diverse size and uses of PP&E.

NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies, which implements SSFAS No. 6, requires contractors with custody of NASA-owned PP&E to report financial property information to NASA on a yearly basis, and also requires contractors with custody of \$10 million or more in NASA-owned PP&E to report financial property information to NASA on a monthly basis.

NFS subpart 1845.71 requires contractors in possession of NASA PP&E to submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors. NFS clause 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, paragraph (a), states the Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA. Currently, if at any time during performance of the contract the amount of NASA property in the custody of the contractor is

equal to or in excess of \$10 million, the contractor has received instructions from the NASA contracting officer to submit a monthly report.

In order to ensure that PP&E are being presented fairly in the Agency's financial statements, independent auditors recommended to NASA that the NFS policy regarding property financial reporting be revised to specify that the supplemental instructions in paragraph (a) of the clause specifically includes the requirement that all contractors having custody of NASA PP&E with a value of \$10 million or more are required to report this information on a monthly basis to NASA.

II. Discussion:

The following sections of the NFS are being revised relative to PP&E reporting requirements:

- NASA is proposing to update NFS clause 1852.245-73 and the associated prescription at NFS 1845.107-70 regarding the reporting of NASA-owned and contractor-held PP&E that equals \$10 million or more on a monthly basis.
- NASA is proposing to update NFS clause 1852.245-73 to add the cognizant NASA Center Industrial Property Officer to the distribution list for the hard copy NF 1018.
- NASA is proposing to update NFS clause 1852.245-73 to revise the annual report submission date from October 15th to October

31st to allow contractors additional time to develop and submit this report.

III. 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 and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this proposed rule to 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 affected NASA contractors with custody of NASA-owned PP&E valued at \$10 million or greater are primarily large businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of this rule is to add a monthly reporting requirement for contractors having custody of NASA-owned PP&E valued at \$10 million or greater to ensure that contractor-held PP&E are more accurately represented in NASA financial statements in accordance with the Statement of Federal Financial Accounting Standard (SFFAS) No. 6, Accounting for Property, Plant, and Equipment and NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies.

The requirements under this proposed rule would apply to any contract award (including contracts for supplies, services, construction, and major systems) that requires contractors to use Government property. According to NASA Property Records in Fiscal Year (FY) 2015 there were 643 contracts that required reporting NASA contractors with custody of Government property to report that property. Of the 643 contracts, approximately 20% or 129 contracts were with small business contractors. Of the 643 contracts, 32 contracts had NASA-owned and contractor-held PP&E with a value of \$10 Million or more and required monthly reporting. Of those 32 contracts, only three were awarded to small business contractors.

The rule contains information collection requirements, however, this rule does not impose additional information collection requirements to the paperwork burden previously

approved under OMB Control Number 2700-0017, titled NASA Property in the Custody of Contractors and OMB Control No. 9000-0075, titled Government Furnished Property Requirements. The impact of this reporting requirement is minimal on small entities based on FY 2015 NASA property records that show only three contractors with custody of NASA PP&E valued at \$10 million or more. No alternatives were identified that would meet the objectives of this proposed rule.

NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities. NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (NFS Case 2016-N024) in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the NFS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700-0017, titled NASA Property in the Custody of Contractors and OMB Control No. 9000-0075, titled Government Furnished Property Requirements.

List of Subjects in 48 CFR Parts 1845 and 1852

Government Procurement

Manuel Quinones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1845 and 1852 are proposed to be amended as follows:

PART 1845—GOVERNMENT PROPERTY

1. The authority citation for part 1845 is revised to read as follows:

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

2. Amend section 1845.107-70 by revising paragraph (d) to read as follows:

1845.107-70 NASA solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts and in all contracts in which the contractor has custody of NASA owned-property with a value of \$10 million or more, unless all property to be provided is subject to the clause at 1852.245-71, Installation-Accountable Government Property. Insert the clause 1852.245-73 in other types of

solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 1852 continues to read as follows:

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

4. Amend section 1852.245-73 by—

- a. Revising the date of the clause;
- b. In paragraph (a), removing the words “in accordance this clause” and adding “in accordance with this clause” in its place; and
- c. Revising paragraphs (b) (2) and (c).

The revised text reads as follows:

1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors.

* * * * *

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (DATE)

* * * * *

(b) (1) * * *

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Industrial Property Officer and a copy to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31st. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31st.

(2) Some activity may be estimated for the month in which the report is submitted, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533) Contractor Financial Management Report cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated

methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(3) In addition to an annual report, if at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of \$10 million or more, the contractor shall also submit a report no later than the 21st of each month in accordance with the requirements of paragraph (c)(2) of this clause.

(4) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly

report in accordance with (c)(3) of this clause, and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

* * * * *

[FR Doc. 2016-17559 Filed: 7/25/2016 8:45 am; Publication Date: 7/26/2016]