

general rule stated in FAR 9.505-4(b) and, in accordance with FAR 9.503, has waived its application. Rather than demand an unworkable mass of interrelated third party non-disclosure agreements, NASA will implement the policy and procedures described in the proposed 1837.203-70 to manage the risks associated with one contractor having access to another contractor's confidential information and to assure those that submit this type of information that NASA will protect it from unauthorized use or disclosure.

As one element of this new approach, 1837.203-70(d)(1) requires that contractors receiving access to confidential information must have developed a comprehensive organizational conflicts of interest avoidance plan. Recognizing that developing this plan may take considerable time and effort, proposals need only summarize the offeror's analysis of the potential organizational conflicts of interest that may arise from having access to another contractor's confidential information, or to Government-generated information that is subject to an exception to the Freedom of Information Act. Each offeror's analysis, together with the other elements of each proposal, will be considered in selecting a contractor for award. After award, the contractor must develop and submit to the contracting officer for review and approval a comprehensive organizational conflict of interest avoidance plan that identifies all potential problems and proposes specific methods to control, mitigate, or eliminate any organizational or ethical concerns noted. This plan must also commit the contractor to take all corrective actions necessary to address any failures to protect confidential information from unauthorized use or disclosure. Once the contracting officer approves this plan, he/she will incorporate the document into the resulting contract.

NASA proposes two clauses to implement the above policies in solicitations and contracts. The first clause at 1852.237-72, Access to Confidential Information, would go into service contracts that involve access to information in the Government's possession that is necessary to support NASA's management activities and administrative functions. This clause would delineate the service contractor's responsibilities to limit to the purposes specified in the contract its use of any of this information that is confidential, to safeguard the information from unauthorized outside disclosure, and to train employees and obtain their written

commitments to handle the information in an authorized manner, only.

The second clause at 1852.237-73, Release of Confidential Information, would go in all solicitations and contracts to notify offerors and contractors that NASA may release their confidential information to other contractors supporting NASA's management activities and administrative functions. Recognizing that this announcement may cause concerns for these offerors and contractors, the clause recites the protections embodied in the receiving, support service contract through the new clause at 1852.237-72. Essentially, the clause at 1852.237-73 announces NASA's intent to release companies' confidential information to support service contractors. But, in announcing this intent, the clause also promises that the support contractors will implement specific and enumerated safeguards and procedures to protect the information.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), because the proposed new, streamlined approach of having each service contractor implement specific safeguards and procedures should offer the same or better protection for confidential information belonging to small business entities than does the current system of third party agreements, envisioned by FAR 9.505-4. This proposed rule should ease the burden on small business entities by not requiring them to enter multiple, interrelated third party agreements with the numerous service contractors that support NASA's management activities and administrative functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 USC 3501, *et. seq.*

List of Subjects in 48 CFR Parts 1809, 1837, and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1809, 1837, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1809, 1837, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1809—CONTRACTOR QUALIFICATIONS

2. Add section 1809.505-4 to read as follows:

1809.505-4 Obtaining access to confidential information.

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505-4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or confidential (see 1837.203-70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect confidential information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203-70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of its confidential information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

PART 1837—SERVICE CONTRACTING

3. Add sections 1837.203-70, 1837.203-71, and 1837.203-72 to read as follows:

1837.203-70 Providing contractors access to confidential information.

(a)(1) As used in this subpart, "confidential information" refers to information that the contractor has developed at private expense or that the Government has generated that qualifies