



April 21, 2022

Christiane S. Diallo
National Aeronautics and Space Administration Headquarters
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Washington, DC 20546
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Submitted Electronically to: <https://www.regulations.gov/document/NASA-2022-0001-0001>

Dear Ms. Diallo,

We are writing in response to an original [Federal Register Notice \(Document Citation: 87 FR 10257, Pages 10257-10258\), dated February 23, 2022](#) – *Requirement for NASA Recipients of Financial Assistance Awards To Obtain a Quotation From Small and/or Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firm*. As a follow up to this Notice, NASA published [Federal Register Notice \(Document Citation: 87 FR 16244, Page 16244\), dated March 22, 2022](#), extending the deadline for comments to April 24, 2022.

The Council on Governmental Relations (COGR) is an association of almost 200 public and private U.S. research universities and affiliated academic medical centers and research institutes. We are a leading voice on the impact of federal regulations, policies, and practices on the performance of research conducted at our member institutions—and when appropriate, we regularly advocate for reducing administrative burden associated with federal regulation.

While COGR fully supports the President's [Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#) (January 25, 2021), we do not support NASA's proposed implementation of a new term and condition that would require recipients of NASA financial assistance to obtain a quotation from small and/or minority businesses, women's business enterprises, or labor surplus area firms when the acquisition of goods or services exceeds the simplified acquisition threshold.

Implementation of this requirement would:

- 1) Place NASA as the only federal agency inconsistent with [2 CFR 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms](#). Part (b) states the “affirmative steps must include,” and lists the six affirmative steps. Implementation of the proposed NASA term and condition would create a seventh step.
- 2) Create new and unnecessary administrative burden for all institutions. If NASA were to implement the proposed term and condition, it would create a precedent for other agencies to implement terms and conditions unique to them. This defeats the purpose of 2 CFR 200,

which was implemented in 2014 to provide uniform practices across all federal agencies. Once an agency is allowed a deviation, institutions are put in the awkward position of complying with multiple administrative requirements across multiple agencies.

- 3) Create disproportional administrative burden for Historically Black Colleges and Universities (HBCUs), Minority Serving Institutions (MSIs), and other emerging research institutions. While all research institutions are adversely affected by new compliance requirements, emerging research institutions do not benefit from economies of scale associated with large-scale research operations, nor do they have reserve resources, and therefore are more significantly disadvantaged by any new compliance requirement.
- 4) Compromise institutional policies that already are being used to comply with 2 CFR 200.321. Our institutions have taken the President's Executive Order 13985 seriously and have developed institutional policies designed to achieve maximum engagement with small and/or minority businesses, women's business enterprises, and labor surplus area firms. Implementation of the proposed NASA term and condition would create an additional and unnecessary layer atop our current institutional procurement policies.
- 5) Create potential inconsistencies with State Procurement policies. Public institutions are subject to State Procurement policies. States have developed thoughtful and effective policies to maximize engagement with small and/or minority businesses, women's business enterprises, and labor surplus area firms. Similar to 4) above, implementation of the proposed NASA term and condition would create an additional and unnecessary layer atop current state procurement policies.

Again, while we fully support the President's Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (January 25, 2021), implementation of NASA's proposed term and condition will result in the concerns raised above, without advancing current efforts by institutions to maximize engagement with small and/or minority businesses, women's business enterprises, and labor surplus area firms. Consequently, we request that NASA withdraw its proposed implementation of the new term and condition.

Thank you for the opportunity to comment on the proposed NASA term and condition. Please contact David Kennedy at dkennedy@cogr.edu if you have questions.

Sincerely,

A handwritten signature in blue ink that reads "Wendy D. Streit". The signature is written in a cursive, flowing style.

Wendy D. Streit
President

Cc: Gilbert Tran, Office of Federal Financial Management, OMB