

Goddard Space Flight Center

MANAGEMENT INSTRUCTION

TITLE : AGREEMENTS UNDER THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958 WITH NON-FEDERAL ENTITIES

1. PURPOSE

This Instruction establishes Goddard Space Flight Center (GSFC) policies and procedures for agreements pursuant to the National Aeronautics Space Act of 1958, as amended, instituted with non-Federal agencies.

2. SCOPE

Agreements between GSFC (or subelement thereof) and any person or corporate entity not a part of, or directly connected with, the Federal Government of the United States or the Government of any foreign state or country are covered under this Instruction.

This Instruction does not cover:

- a. grants or cooperative agreements issued under the authority of the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224);
- b. interagency agreements (NASA Management Instruction (NMI) 1050.1);
- c. interdepartmental procurement (Federal Acquisition Regulation (FAR) 8.401);
- d. making available Government property or facilities to contracts or grantees, whether or not under a facilities contract (FAR 45.103) or;
- e. making available Government property or facilities to concessionaires, or GSFC nonappointed fund activities, outlease or other temporary or conditional alienation of GSFC controlled real property by permit, use of agreement, license or easement (NPD 8813.1 and 8813.2).

The terms of this Instruction are not intended to conflict with, or modify in anyway, Goddard Management Instruction (GMI) 4210.6, "Loans of Government Property," the FAR, GSFC Regulations concerning real property and facilities, or the imposition of user or reimbursable charges.

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3. AUTHORITY

- a. Subsection 203(b) of the National Aeronautics Space Act of 1958 as amended (42 U.S.C. 2437(b)); and
- b. 2 U.S.C. 91 (a statutory compilation as discussed in 36 Comp. Gen. (561)).

4. POLICY

It is the policy of GSFC to enter into agreements to engage in joint endeavors and to cooperate with non-Federal entities in the use of personnel, services, equipment, and facilities for the mutual benefit of all parties concerned provided that:

- a. use of GSFC services, equipment, and facilities by others, as provided herein, will not interfere with a GSFC mission having higher priority; and
- b. there is no conflict with existing procurement regulations, grants or cooperative agreements, other regulations or policy.

It is also the policy of GSFC to accept unconditional gifts or services from anyone provided that acceptance by GSFC of a tender of an unconditional gift by a corporate entity or person does not obligate GSFC to expend funds for maintenance, operation, etc., it would not otherwise have had to expend.

5. CONTENTS OF INSTRUMENTS IMPLEMENTING AGREEMENTS UNDER THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958

The following are to be inserted where applicable. It is noted that some agreements will not include all of the items listed below:

- a. citation of authority therefor;
- b. identification of the parties;
- c. state of purposes and objectives to be served and the scope of activities to be undertaken; this should be in sufficient detail to demonstrate that the instrument is consonant with the cited authority.
- d. any contemplated exchange of funds, compensation, reimbursement, etc., should be expressly covered in detail;
- e. the date the agreement is to take effect, the period of performance and procedures for termination or modification should be specified;
- f. any property to be exchanged should be identified, and conditions for its care, custody, and accountability specified;

- g. an indication that a representative of one party entering on, or resident on, the property of another is to observe the rules and regulations (access to security information, hours of work, safety, standards of conduct, etc.) of the host, exceptions should be expressly stated;
- h. clauses required by statute for any contract (as opposed to contracts for purchase of supplies, material, or services) are to be included;
- i. appropriate provisions are to be provided for intellectual property rights (patents, technical data, copyright, access to proprietary information, etc.);
- j. any exemptions, waivers, or warranties as to liability should be stated; and
- k. the nature of the arrangement and mutuality of benefit should be established.

6. APPROVAL, PREPARATION, AND IMPLEMENTATION

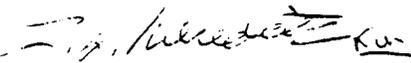
- a. The functional office desiring to enter into the agreement should initiate preparation of the instruction. Normally this should involve consultation with the University Affairs Officer for procedural matters and the Office of Chief Counsel to ascertain the authority therefor, and a draft of a statement of purpose, objectives, and scope of the activities to be undertaken. Approval to proceed with the agreement should be obtained on the basis of such statement. Such approval shall be by the Director of the initiating functional office, and where appropriate, the Headquarters official having cognizance of the relevant function.
- b. After approval to proceed with the agreement, but prior to entering into discussions with the other party, a complete instrument is to be drafted, including any provisions which are deemed necessary under the guidelines of paragraph 1, that are not included in the statement of purposes, objectives, etc. This will include consultation and assistance by the Office of Chief Counsel, who in turn will consult with the Office of Patent Counsel on intellectual property matters. A draft instrument is not to be forwarded to the other party without legal review, to insure that such party is completely advised of the terms and conditions contemplated by NASA. Any exceptions or substantive changes proposed by the other party should also have legal review before the instrument is finalized.

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- c. The finalized instrument is to be forwarded to the University Affairs Officer for required processing and transmittal to the other party for signature. Upon return, the University Affairs Officer will forward the agreement to the Center Director for signature (signatory authority is with the Center Director unless expressly delegated). There should be included, along with the finalized instrument submitted for signature, indicia that the project has been approved (e.g., approval of the statement of purposes and objectives, etc., by a Director of and Headquarters functional office where deemed appropriate), and the instrument as presented for signature has received legal review.
- d. In some instances the relationship between the parties may be multifaceted and on a continuing basis, with specific objectives varying from one another in scope. In this instance, consideration should be given to a single instrument on an objective-by-objective basis, preferably by delegation of authority by the Center Director, in consonance with the approval and execution of the basic instrument.
- e. An executed agreement will be distributed by the University Affairs Officer.

7. CANCELLATION

GMI 1362.1A, same subject, dated November 20, 1979.


Noel W. Hinners
Director

