

National Aeronautics and Space Administration



Doing Business With NASA

A Comparison of Legal Instruments

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National Aeronautics and Space Act

Sec. 203(c)(5)



*“In the performance of its functions
the Administration is authorized ...
to enter into and perform such **contracts,
leases, cooperative agreements, or other transactions**
as may be necessary in the conduct of its work
and on such terms as it may deem appropriate,
with any agency or instrumentality of the
United States, or with any State, Territory,
or possession, or with any political subdivision thereof,
or with any person, firm, association, corporation,
or educational institution.”*

Agenda



- **Procurement Contract**
- **Cooperative Agreement/Grant**
- **Space Act Agreement**
- **License**
- **Enhanced Use Lease Agreement**
- **Cooperative Research and Development Agreement (CRADA)**
- **Conclusion**

Procurement Contract



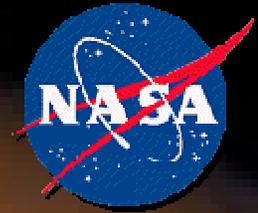
- **Used to acquire goods, services, or both**
- **Competition required in most cases
(ref: Competition in Contracting Act of 1984)**
- **Federal Acquisition Regulations (FAR) apply**
- **Process owner is the Procurement Office**
- **Ref: (31 U.S.C. §6303 and the Armed Services Procurement Act of 1947).**

Cooperative Agreements/Grants



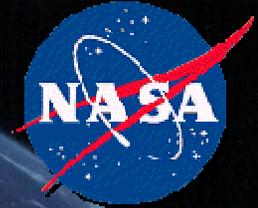
- Principal purpose is NOT to acquire goods or services
- “Substantial participation” on the part of the agency is expected for cooperative agreements.
 - Conversely, “substantial participation” is NOT expected for grants
- Both cooperative agreements and grants require a “public purpose”
 - Definition of “public purpose” is open to broad interpretation on the part of the involved agency
- Competition not required
- FAR does not apply
- At NASA, cooperative agreements and grants are generally used for NASA sponsored R&D
- Process owner is the Procurement Office
- Ref: (31 U.S.C. §6304 and §6305; part of the “Chiles Act”).

Space Act Agreements (SAAs)



- **Generally, SAAs are used for collaboration, excess capacity, property loans, leases, or any combination of said activities**
- **SAA authorization comes from NASA's "other transactions" authority**
- **Competition not required**
- **FAR does not apply**
- **Generally, there is no money transfer or money flows from the non-NASA party to NASA**
- **NASA may contribute personnel, services, facility use, property, and (in very rare instances) cash**
- **Memorandums of understanding (MOUs) are examples of a type of SAA.**
 - **MOUs are generally used for agreements between NASA and another federal agency**
- **At JSC, the process owner is the Technology Transfer Office.**

Licenses



Used to transfer specific rights associated with Intellectual Property (IP)

- **IP generally associated with NASA-owned invention covered by a patent or patent application**
- **Exclusive, partially exclusive, or nonexclusive licenses available**
- **Commercialization of the patentable invention by licensee required**
- **Royalties generally required as a matter of NASA policy**
- **Competition not required**
- **The FAR does not apply**
- **Process owner is currently the Office of General Counsel**
 - **Plans to transfer this process to the Innovative Partnership Program Office and Technology Transfer Offices at each NASA Center**
- **Ref: (35 U.S.C. §207).**



Enhanced Use Lease (EUL) Agreements

“Notwithstanding any other provision of law, the Administrator may enter into a lease under this section with any person or entity (including another department or agency of the Federal Government or an entity of a State or local government) with regard to any real property under the jurisdiction of the Administrator at no more than two (2) National Aeronautics and Space Administration (NASA) centers.”

Ref: 42 U.S.C. §2459j(a)

- **Used to lease under-utilized real property assets**
- **Allows NASA to receive facilities, services, floor space, or revenue as consideration.**
- **EUL authority resides only at NASA Ames Research Center and Kennedy Space Center**
- **Space Act Agreements used to fulfill the purpose of an EUL Agreement at Johnson Space Center**

CRADA



CRADAs are used for cooperative R&D consistent with a federal lab's mission

- Rarely used at NASA because NASA's "other transactions" authority is considered to be more flexible
- Competition not required
- The FAR does not apply
- Advanced licensing for "inventions not yet invented" is allowed
- Funds from NASA to the CRADA partner are not allowed
- No clear process owner for CRADAs at NASA
 - Draft policy document designates the Innovative Partnership Program office as the process owner.
- Ref: (15 U.S.C. §3710a; part of "Stevenson-Wydler Technology Innovation Act").

Conclusion



- **NASA has broad authority to enter into business relationships to fulfill its mission objectives**
 - Interested parties (NASA and/or non-NASA Party) should define their requirements
 - The appropriate NASA process owner will work with the Office of General Counsel or relevant Center's Office of Chief Counsel to determine what legal instrument represents a "best fit" for the requirements

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	Contract	Cooperative Agreement Grant	Space Act Agreement	Patent License	Enhanced Use Lease	CRADA
Purpose	Used by NASA to acquire goods, services, or both.	Used by NASA to sponsor activities that relate to a public purpose (generally R&D).	Used by NASA for collaborations, excess capacity, leases, property loans, or any combination.	Used by NASA to transfer specific rights associated with a NASA-owned invention.	Used by Ames Research Center (ARC) and Kennedy Space Center (KSC) to lease under-utilized real property assets.	Rarely used by NASA for cooperative research and development.
Competition Required?	Generally, Yes	No	No	No	No	No
Notable Requirement(s)	-Goods or Services -Mission Need	-Public Purpose -NASA Substantial Involvement (for Cooperative Agreement)	-No Formal "Requirements" -NASA does have "Guidelines"	-Intellectual Property -Royalty-Based Commercialization	-Real Property	-Federal Lab -R&D
NASA Cash to the Non-NASA Party	Yes	Yes	Yes, but it's very rare.	No	No	No
Process Owner	Office of Procurement	Office of Procurement	Technology Transfer Office	Office of General Counsel*	ARC and KSC	Undefined at this time.
Notable Advantage	\$\$\$	\$	Flexibility	Possible Exclusive Rights to an Invention that may be Patentable	In-Kind Consideration for Real Property	Advanced Licensing of Inventions Not Yet Invented
Notable Disadvantage	Standard Regulations and Provisions	Standard Regulations and Provisions (but not nearly as large as the FAR)	Historically, SAAs are contain less rigor vs. a procurement contract.	Royalty Payments as Consideration	Limited to Two NASA Centers	No Cash Contribution Allowed From NASA
Authority	Space Act; 31 USC 6303; 10 USC 2302	Space Act; 31 USC 6304; 31 USC 6305	Space Act	35 USC 207	Space Act; 42 USC 2459j	15 USC 3710a
Regulation	Federal Acquisition Regulations	Grant and Cooperative Agreement Handbook (14 CFR Part 1260)	No Formal Regulation; NASA has "Guidelines" documented in an SAA Guide	37 CFR Part 404, also referred to as the "Licensing Regulations"	No Formal Regulation	No Formal Regulation