

852.229-70 [Amended]

12. In part 852, § 852.229-70 introductory text is amended by adding "or, if the contract is for commercial items, in lieu of paragraph (k), Taxes, in FAR clause 52.212-4" immediately after "in FAR 52.229-1".

852.229-71 [Amended]

13. In part 852, § 852.229-71 introductory text is amended by adding "or, if the contract is for commercial items, as an addendum to FAR clause 52.212-4" immediately after "in FAR 52.229-1".

852.271-70 [Amended]

14. In part 852, § 852.271-70 is amended by removing "Chief Medical Director" and adding, in its place, "Under Secretary for Health".

PART 870—SPECIAL PROCUREMENT CONTROLS

15. The authority citation for part 870 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

870.112 [Amended]

16. In part 870, § 870.112, paragraph (a) is amended by removing "852.210-74" and adding, in its place, "852.211-74", Footnote 1 is amended by removing "Veterans Administration" and adding, in its place, "Department of Veterans Affairs", paragraph (b) is amended by removing "852.210-74" and adding, in its place, "852.211-74", by removing "the Office of Information Resources Operations" and adding, in its place, "Telecommunications Support Service"; by removing "(93)" each time it appears in paragraphs (b) and (c)(1) and adding, in its place, "Acquisition Administration Team".

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1843 and 1852****Suitable Adjustments Under Contracts for Construction, Dismantling, Demolishing, or Removing Improvements**

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends NASA's Federal Acquisition Regulation

Supplement (NFS) to set forth an agency-wide clause that may be used for equitable adjustments under contracts for construction, dismantling, demolishing, or removing improvements that are contemplated to be fixed-price and exceed the simplified acquisition threshold.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358-0444.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1997, a proposed rule to amend the NFS to establish an agency-wide clause to handle equitable adjustments under fixed-price contracts in excess of the simplified acquisition threshold for construction, dismantling, demolishing, or removing improvements was published in the **Federal Register** (62 FR 64545-64546) for comment. Comments were submitted by only one commenter who took exception to several aspects of the proposed rule. The comments were reviewed and considered; however, no changes were made to the proposed rule as a result of them.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1843 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1843 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1843 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1843—CONTRACT MODIFICATIONS**1843.205-70 [Amended]**

2. In section 1843.205-70, the heading is revised, paragraphs (a), (b), and (c) are redesignated as (a)(1), (2), and (3), and a new paragraph (b) is added to read as follows:

1843.205-70 NASA contract clauses.

* * * * *

(b) The contracting officer may insert a clause substantially as stated at 1852.243-72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**1852.243-70 [Amended]**

3. In section 1852.243-70, introductory text, the prescription "1843.205-70(a)" is revised to read "1843.205-70(a)(1)".

4. In Alternate I to section 1852.243-70, the prescription "1843.205-70(b)" is revised to read "1843.205-70(a)(2)".

5. In Alternate II to section 1852.243-70, the prescription "1843.205-70(c)" is revised to read "1843.205-70(a)(3)".

6. Section 1852.243-72 is added to read as follows:

1852.243-72 Equitable Adjustments.

As prescribed in 1843.205-70(b), insert the following clause.

Equitable Adjustments April 1998

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the "Suspension of Work" clause (FAR 52.242-14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission
To Contractor on work performed by other than its own forces	----	----	10
To first tier subcontractor on work performed by its subcontractors	----	----	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	----

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach

an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

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