

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1815

Waiver of Submission of Cost or Pricing Data for Acquisitions With the Canadian Commercial Corporation and for Small Business Innovation Research Phase II Contracts

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

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to provide a class waiver from the FAR 15.403-4 requirement for the submission of cost or pricing data for Small Business Innovation Research (SBIR) program Phase II contracts. A waiver is permitted by FAR 15.403-1(c)(4). The rule also deletes the end date for the existing waiver of the submission of cost or pricing data for acquisitions with the Canadian Commercial Corporation (CCC). In addition, this rule clarifies that assurances of price fairness and reasonableness by the CCC should be relied on, but that contracting officers are to ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to perform any required proposal analysis, including a technical analysis and a cost realism analysis.

EFFECTIVE DATE: March 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358-0444, email: joseph.lecren@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

FAR 15.403-4 requires that cost or pricing data be submitted for contract awards and modifications in excess of \$500,000 unless one of the exceptions at FAR 15.403-1(b) apply. One of the exceptions listed there are waivers granted under FAR 15.403-1(c)(4). Waivers may be granted under FAR 15.403-1(c)(4) by the head of the contracting activity if the price can be determined to be fair and reasonable without the submission of cost or pricing data.

NASA SBIR Phase II contract awards, which are generally limited to \$600,000, do not meet the FAR 15.403-1(b) adequate price competition, prices set by law or regulation, or commercial item exceptions. However, a class waiver is considered to be in the

Government's interest to promote maximum small business participation in the SBIR program and increase the number of small businesses participating in Federal R&D contracts. The Government's payment of fair and reasonable prices under SBIR Phase II contracts is ensured without the submission of cost or pricing data by (i) contracting officers having access to adequate information in the offerors' proposals; (ii) Phase II proposals being subjected to multiple technical reviews; and (iii) contracting officers having the ability under FAR 15.403-5(a)(3) to request information other than cost or pricing data if additional information is needed.

A class waiver for SBIR Phase II contracts would result in consistent practices among NASA centers, thereby eliminating the possible confusion encountered by contractors that deal with more than one center for Phase II contracts. In addition, the value of the cost or pricing data for SBIR Phase II contracts generally has been minimal and has been found to result in delays in awards as the small businesses often cannot provide the data quickly.

The elimination of the end date for the waiver of submission of cost or pricing data from the CCC makes NASA's waiver consistent with the one between the Department of Defense and the CCC. The current rule states that the CCC will provide assurance of the fairness and reasonableness of the proposed prices. This has been interpreted by some to mean that no additional analysis is necessary. The revised rule clarifies that, while this assurance is to be relied on, it may be necessary to obtain information other than cost or pricing data from subcontractors to the CCC in order to perform any required proposal analysis, including a technical analysis and a cost realism analysis.

Impact

Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or

collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1815

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1815 is amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 1815 continues to read as follows:

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

2. Section 1815.403-170 is revised to read as follows:

1815.403-170 Waivers of cost or pricing data.

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Application of Earned Value Management (EVM)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule changes the NASA FAR Supplement to apply Earned Value Management (EVM) at NASA by establishing NASA-wide clauses and provisions compatible with those used by DoD. Specifically, the change clarifies the role of the Defense Contract Management Command (DCMC) with respect to its responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria, and with NASA Policy Directive 9501.3, Earned Value Performance Management, and DoD 5000.2-R.

EFFECTIVE DATE: March 5, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358-0491, kenneth.sateriale@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

EVM is a commonly used performance (i.e. cost, schedule, and technical) measurement tool for program managers in the aerospace industry. NASA and DoD are major customers in the Government sector of the aerospace industry, and cooperate to align their business practices wherever practicable in order to realize cost and resource efficiencies. Therefore, they have collaborated closely over the last several years to align their approaches to the use of EVM. This change completes that alignment process.

A proposed rule was published in the **Federal Register** at 63 FR 63654, November 16, 1998. The revisions in the final rule are based on an analysis of the public comments.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes do no more than align NASA practices with those already in place at DoD, which shares essentially the same industry sector. This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1842 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

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

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Subpart 1842.3 is added to read as follows:

Subpart 1842.3—Contract Administration Office Functions

1842.302 Contract administration functions. (NASA supplements paragraph (a))

(a) In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria and conformity with ANSI/EIA Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMC.

3. Subpart 1842.74 is added to read as follows:

Subpart 1842.74—Earned Value Management

1842.7401 Earned Value Management Systems (EVMS).

1842.7402 Solicitation provisions and contract clauses.

Subpart 1842.74—Earned Value Management

1842.7401 Earned Value Management Systems (EVMS).

When an offeror or contractor is required to provide an EVMS plan to the Government in accordance with NASA Policy Directive (NPD) 9501.3, Earned Value Management, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO) to obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

1842.7402 Solicitation provisions and contract clauses.

(a) When the Government requires Earned Value Management, the contracting officer shall insert:

(1) The provision at 1852.242-74, Notice of Earned Value Management System, in solicitations; and

(2) The clause at 1852.242-75, Earned Value Management System, in solicitations and contracts.

(b) The contracting officer shall insert the clause at 1852.242-76, Modified Cost Performance Report, in solicitations and contracts requiring modified cost performance reporting

(see NPD 9501.3, Earned Value Management).

(c) The contracting officer shall insert the provision at 1852.242-77, Modified Cost Performance Report Plans, in solicitations for contracts requiring modified cost performance reporting (see NPD 9501.3).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 1852.242-74, 1852.242-75, 1852.242-76, and 1852.242-77 are added to read as follows:

1852.242-74 Notice of Earned Value Management System.

As prescribed in 1842.7402(a)(1), insert the following provision:

Notice of Earned Value Management System (March 1999)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that:

(1) The proposed earned value management system (EVMS) complies with the EVMS criteria of NASA Policy Directive (NPD) 9501.3, Earned Value Management, or DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) The company EVM system conforms with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the successful offeror shall submit a plan for compliance with the NASA EVM criteria as described in NPD 9501.3.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(iii) Describe the management system and its application in terms of the criteria;

(iv) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The Government will review the offeror's plan for EVMS before contract award. The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(c) Offerors shall identify in their proposals the major subcontractors, or major subcontracted efforts if major subcontractors have not been selected, planned for application of EVMS. The prime contractor and the Government shall agree to subcontractors selected for application of EVMS.

(End of Provision)

1852.242-75 Earned Value Management Systems.

As prescribed at 1842.7402(a)(2), insert the following clause:

Earned Value Management System (March 1999)

(a) In the performance of this contract, the Contractor shall use:

(1) An earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) A company EVMS that the ACO has recognized as conforming with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO per paragraph (a) of this clause or the Contractor does not have an existing cost schedule control system (C/SCS) that has been accepted by the Government, the Contractor shall apply the Contractor's EVMS to the contract and be prepared to demonstrate to the ACO that its system complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, exercise of significant contract options, or incorporation of major contract modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation.

The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO and provide an information copy to the NASA Contracting Officer at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: (Insert list of applicable subcontractors)

(End of clause)

1852.242-76 Modified Cost Performance Report.

As prescribed in 1842.7402(b), insert the following clause:

Modified Cost Performance Report (March 1999)

(a) The Contractor shall use management procedures in the performance of this contract that provide for:

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the Modified Cost Performance Report (M/CPR).

(b) As a minimum, these procedures must provide for:

(1) Establishing the time-phase budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after consultation with the Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and a projected-at-completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as:

(1) Complying with the earned value management system criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) Conforming with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, exercise of significant contract options, or incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate

resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to:

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the M/CPR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the M/CPR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish M/CPR in each case where the subcontract is other than firm-fixed-price, time-and-materials, or labor-hour; is 12 months or more in duration; and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's M/CPR.

(End of clause)

1852.242-77 Modified Cost Performance Report Plans.

As prescribed in 1842.7402(c), insert the following provision:

Modified Cost Performance Plans (March 1999)

(a) The offeror shall submit in its proposal a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 1852.242-76, Modified Cost Performance Report.

(b) The offeror may propose to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as:

(1) Complying with the earned value management system criteria of NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs; or

(2) Conforming with the full intentions of the guidelines presented in ANSI/EIA Standard 748, Industry Guidelines for Earned Value Management Systems. In such cases, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

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