

List of Subjects in 46 CFR Part 572

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, 6, 10, 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1703, 1704, 1705, 1709, 1714 and 1716, Part 572 of Title 46, Code of Federal Regulations, is amended as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. In Appendix A to Part 572, Part II of the Instructions is revised as follows:

Appendix A to Part 572—Information Form for Class A/B Agreements and Instructions

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Part II

Part II requires a list of all effective agreements (1) that cover all or part of the geographic scope of the filed agreement, (2) whose parties include one or more of the parties to the filed agreement, and (3) that fall within at least one of the following categories: an agreement that authorizes "capacity management" or "capacity regulation" as defined by 46 CFR 572.104(e); a "joint service agreement" as defined by 46 CFR 572.104(o); a "pooling agreement" as defined by 46 CFR 572.104(y); a "rate agreement" as defined by 46 CFR 572.104(bb); a "sailing agreement" as defined by 46 CFR 572.104(cc); an agreement that authorizes regulation or discussion of "service contracts" as defined by 46 CFR 572.104(dd); a "space charter agreement" as defined by 46 CFR 572.104(hh); or an agreement that authorizes discussion or exchange of data on "vessel-operating costs" as defined by 46 CFR 572.104(kk).

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3. In Appendix B to Part 572, Part II of the Instructions is revised as follows:

Appendix B to Part 572—Information Form for Class C Agreements and Instructions

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Part II

Part II requires a list of all effective agreements that (1) cover all or part of the geographic scope of the filed agreement, (2) whose parties include one or more of the parties to the filed agreement, and (3) that fall within at least one of the following categories: an agreement that authorizes "capacity management" or "capacity regulation" as defined by 46 CFR 572.104(e); a "joint service agreement" as defined by 46 CFR 572.104(o); a "pooling agreement" as

defined by 46 CFR 572.104(y); a "rate agreement" as defined by 46 CFR 572.104(bb); a "sailing agreement" as defined by 46 CFR 572.104(cc); an agreement that authorizes regulation or discussion of "service contracts" as defined by 46 CFR 572.104(dd); a "space charter agreement" as defined by 46 CFR 572.104(hh); or an agreement that authorizes discussion or exchange of data on "vessel-operating costs" as defined by 46 CFR 572.104(kk).

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By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 96-31223 Filed 12-6-96; 8:45 am]
BILLING CODE 6730-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1843 and 1852

Addition of Coverage to NASA FAR Supplement (NFS) on NASA Shared Savings Clause

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

ACTION: Final rule.

SUMMARY: Parts 1843 and 1852 are amended to establish the conditions for use and the administrative procedures for a "Shared Savings Clause" to be used in solicitations and contracts.

EFFECTIVE DATE: December 9, 1996.

ADDRESSES: Mr. James A. Balinskas, Code HC, NASA Headquarters, 300 E Street SW, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Balinskas, NASA Headquarters, Code HC, telephone: (202) 358-0445.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1995, a proposed rule to amend the NFS to add a "Shared Savings Clause" was published in the Federal Register (60 FR 54208). The intent of the clause was to provide an incentive for contractors to identify and implement significant cost reduction programs. In return, they would be eligible for a share of realized savings which resulted from those cost-cutting projects once they were approved by the contracting officer. Comments were received both from within NASA and from industry. All comments were reviewed and the rule was revised to reflect the comments where it was considered warranted. Many of the revisions were made to clarify definitions, improve consistency of terms used throughout the contract

clause, limit applicability of the clause to the appropriate classes of contracts, and better communicate how the provisions of the clause were intended to operate. In addition, the location of the proposed rule within the NFS was also changed.

Impact

NASA certifies that this regulation will not have a significant economic impact 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 recordkeeping 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 1843 and 1852 continues to read as follows:

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

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.71—[Added]

2. Subpart 1843.71 is added to read as follows:

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings and being realized.

1843.7102 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.243-71, Shared Savings, in all solicitations and contracts expected to exceed \$1,000,000, except those awarded under FAR part 12, NRA,

or AO procedures, or those awarded under the SBIR or STTR programs.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.243-71 [Added]

3. Section 1852.243-71 is added to read as follows:

1852.243-71 Shared Savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS

December 1996

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential purpose of services to be provided under the contract.

(b) *Definitions:* (1) *Cost savings*, as contemplated by this clause, means savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal (CRP)*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this clause, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this clause, contractor implementation costs, or "implementation costs", shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this clause, the term government costs means internal costs of NASA, or any other government agency, which result directly from development and implementation of the CRP. These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in

contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the CRP.

(c) *General.* The Contractor will develop, prepare and submit CRPs with supporting information, as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor shall share in any net cost savings realized from approved and implemented CRPs in accordance with the terms of this clause. The Contractor's actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact performance on its contract, including government and other contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and the Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) *Computation of cost savings.* The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) *Supporting Information.* As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/

or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submittals.

(f) *Administration.*

(1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRPs should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the contractor may, upon concurrence of the Contracting Officer's responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract

modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings, and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings

associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in

advance of the intended action and affording the Contractor an opportunity for discussion.

(g) *Limitations.* Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

[FR Doc. 96-31134 Filed 12-6-96; 8:45 am]

BILLING CODE 7510-01-M