

§ 76.1602 Customer service—general information.

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(b) * * *

(7) Effective May 1, 2011, any assessed fees for rental of navigation devices and single and additional CableCARDS; and,

(8) Effective May 1, 2011, if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:

(i) The rental of single and additional CableCARDS; and

(ii) The rental of operator-supplied navigation devices.

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■ 9. Revise § 76.1902(s) to read as follows:

§ 76.1902 Definitions.

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(s) *Unencrypted broadcast television* means any service, program, or schedule or group of programs, that is a substantially simultaneous retransmission of a broadcast transmission (i.e., an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that is made by a terrestrial television broadcast station located within the country or territory in which the entity retransmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a commercially-adopted access control method (e.g., is broadcast in the clear to members of the public receiving such broadcasts), regardless of whether such entity subjects such retransmission to an access control method.

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■ 10. Revise § 76.1908(a) to read as follows:

§ 76.1908 Certain practices not prohibited.

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(a) Encoding, storing or managing commercial audiovisual content within its distribution system or within a covered product under the control of a covered entity's commercially adopted access control method, provided that the outcome for the consumer from the application of the encoding rules set out in § 76.1904(a) and (b) is unchanged thereby when such commercial audiovisual content is released to consumer control and provided that all other laws, regulations, or licenses applicable to such encoding, storage, or

management shall be unaffected by this section, or

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[FR Doc. 2011-16869 Filed 7-7-11; 8:45 am]

BILLING CODE 6712-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834

RIN 2700-AD29

Major System Acquisition; Earned Value Management

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule to delete the requirement in the NASA FAR Supplement (NFS) for contractors to establish and maintain an Earned Value Management System (EVMS) for firm-fixed-price (FFP) contracts. The final rule recognizes the reduction in risk associated with FFP contracts and intends to relieve contractors of an unnecessary reporting burden.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Carl Weber, NASA, Office of Procurement, Contract Management Division (Suite 5K80); (202) 358-1784; *e-mail:* carl.c.weber@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the **Federal Register** at 76 FR 7526 on February 10, 2011. The sixty day comment period expired April 11, 2011. Three comments were received from two respondents. No changes are made to the proposed rule as a result of public comments.

II. Discussion and Analysis of the Public Comments

Comment: The respondent suggested that the policy should more clearly define in house and external Earned Value Management Requirements.

Response: The regulation in the NASA FAR Supplement, 1834.201, is only directed toward contractor external efforts. Internal Government requirements are included but are not regulatory and not a part of this rulemaking.

Comment: The respondent suggested including a statement requiring any additional reporting requirements for FFP contracts to be identified in the solicitation or subsequent contract modification.

Response: NASA will collect the necessary data for project management

and oversight. The rule states: "The contracting officer shall collaborate with the government's program/project manager to ensure the appropriate data can be obtained or generated to fulfill program management needs". There are various methods to obtain the appropriate data, and the CO will include Data Requirements in the solicitation and/or contract as needed on a case-by-case basis.

Comment: The respondent stated that NASA should consider implementing the change to existing contracts providing additional cost savings to NASA and the industry.

Response: NASA will not require, but may consider, implementing the change on existing contracts, on a case-by-case basis.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it relaxes previous requirements in the NASA FAR Supplement and does not impose a significant economic impact beyond that previously required.

V. Paperwork Reduction Act

This final rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1834

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Part 1834 is amended as follows:

PART 1834—MAJOR SYSTEM ACQUISITION

■ 1. The authority citation for 48 CFR Part 1834 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1)

■ 2. Section 1834.201 is revised to read as follows:

1834.201 Policy.

(a) NASA requires use of an Earned Value Management System (EVMS) on acquisitions for development or production work, including development or production work for flight and ground support systems and components, prototypes, and institutional investments (facilities, IT infrastructure, etc.) as specified below:

(1) For cost or fixed-price incentive contracts and subcontracts valued at \$50 Million or more the contractor shall have an EVMS that has been determined by the cognizant Federal agency to be in compliance with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748).

(2) For cost or fixed-price incentive contracts and subcontracts valued at \$20 Million or more but less than \$50 Million, the contractor shall have an EVMS that complies with the guidelines in ANSI/EIA-748, as determined by the cognizant Contracting Officer.

(3) For cost or fixed-price incentive contracts and subcontracts valued at less than \$20 Million the application of

EVM is optional and is a risk-based decision at the discretion of the program/project manager.

(b) Requiring earned value management for firm-fixed-price (FFP) contracts and subcontracts of any dollar value is discouraged; however, a schedule management system and adequate reporting shall be required to plan and track schedule performance for development or production contracts valued at \$20 Million or more. In addition, for FFP contracts that are part of a program/project of \$50 Million or more, the contracting officer shall collaborate with the government's program/project manager to ensure the appropriate data can be obtained or generated to fulfill program management needs and comply with NASA Procedural Requirements (NPR) 7120.5.

(c) An EVMS is not required on non-developmental contracts for engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services.

(d) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA)

office in determining the adequacy of proposed EVMS plans and procedures and system compliance.

(e) Notwithstanding the EVMS requirements above, if an offeror proposes to use a system that has not been determined to be in compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) Standard-748, Earned Value Management Systems, the offeror shall submit a comprehensive plan for compliance with these EVMS standards, as specified in 1852.234-1, Notice of Earned Value Management System. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that complies with these standards.

■ 3. In section 1834.203-70, the introductory text is revised to read as follows:

1834.203-70 NASA solicitation provision and contract clause.

Except for firm-fixed price contracts and the contracts identified in 1834.201(a)(3), the contracting officer shall insert—

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[FR Doc. 2011-17116 Filed 7-7-11; 8:45 am]

BILLING CODE 7510-01-P