

may result in a major breach of security. However, the description does not clearly state that to be a major breach of security, the outcomes must result from an act or omission by the contractor. Revising the clause to clearly state that a major breach of security is an act or omission by the contractor that results in the various outcomes (compromise of classified information, illegal technology transfer, etc.) would make the major breach of security paragraph consistent with paragraph (a) (major breach of safety) of the clause.

Additionally, the clause states that a major breach of security may arise from damage or loss greater than \$250,000 to the Government, but it is not clear if this outcome is a standalone provision or if it applies to other outcomes in the clause (e.g., does a major breach occur if illegal technology transfer or theft occurs, and the result is damage or loss greater than \$250,000 to the Government). This revision will remove the reference to damage or loss greater than \$250,000 to the Government, but also clarify that two of the outcomes are equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

Also, the definition of major breach of safety or security in 1816.405–274, Award Fee Evaluation Factors, will be revised to make it consistent with the revised 1852.223–75, Major Breach of Safety or Security definition.

Lastly, OSHA is corrected to read as the Occupational Safety and Health Administration in 1852.223–75, Major Breach of Safety or Security clause and in 1816.405–274, Award Fee Evaluation Factors.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Parts 1816 and 1852 in accordance with 5 U.S.C. 610.

C. 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 Parts 1816 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1816 and 1852 continues to read as follows:

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

PART 1816—TYPES OF CONTRACTS

2. In section 1816.405–274, revise paragraphs (c)(2) and (c)(3) to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(c) * * *

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any “willful” or “repeat” violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations, but must be directly related to the work on the contract. A major breach of security is an act or omission by the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223–75 is amended by revising the clause date; deleting “Occupational Health and Safety Administration” and adding “Occupational Safety and Health Administration” in its place in the last sentence of paragraph (a); and revising paragraph (b) to read as follows:

1852.223–75 Major Breach of Safety or Security.

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Major Breach of Safety or Security (February 2002)

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(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

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[FR Doc. 02–4077 Filed 2–19–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1832

RIN 2700–AC33

Limitation on Incremental Funding and Deobligations

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to revise the criteria for incrementally funding contracts and establish dollar thresholds for incremental funding and deobligations under contracts. These changes will further limit the number of contracts eligible to be incrementally funded and the number of incremental funding and deobligation modifications.

EFFECTIVE DATE: February 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Lentz, NASA Headquarters (Code HK), Washington, DC, (202) 358–0416, e-mail: r lentz@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Currently, NFS 1832.702–70 limits the incremental funding of cost-reimbursement and fixed-price contracts. In spite of these restrictions, numerous incremental funding modifications are being issued against

each of the above contracts. The high number of modifications creates a workload burden for budget and procurement personnel in the Agency. This final rule further restricts the number of cost-reimbursement contracts that can be incrementally funded by revising the criteria that a contract must meet in order for it to be incrementally funded. A threshold of \$500,000 or more is specified for R&D contracts under which no supplies are deliverable and a minimum contract period of performance of at least one year is specified. Furthermore, initial contract funding must be \$100,000 or more. It also establishes a minimum dollar threshold of \$25,000 that certain incremental funding and deobligation modifications must meet.

B. Regulatory Flexibility Act

NASA certifies that 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 the changes primarily affect internal procedures which will merely result in fewer, but larger dollar value, funding actions on contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new record keeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that 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 1832

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR part 1832 is amended as follows:

1. The authority citation for 48 CFR Part 1832 continues to read as follows:

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

PART 1832—CONTRACT FINANCING

2. Revise section 1832.702–70 to read as follows:

1832.702–70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met:

- (1) The total value of the contract (including options as defined in FAR Subpart 17.2) is—
 - (i) \$500,000 or more for R&D contracts under which no supplies are deliverable; or
 - (ii) \$1,000,000 or more for all other contracts.
- (2) The period of performance exceeds one year.
- (3) The funds are not available to fund the total contract value fully at award.
- (4) Initial funding of the contract is \$100,000 or more.
- (b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.
- (c)(1) Fixed-price contracts for research and development may be

incrementally funded if the conditions of 1832.702–70(a)(1) through (4) are met and the initial funding of the contract is at least 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) Except for a modification issued to fully fund a contract, incremental funding modifications shall not be issued for amounts totaling less than \$25,000.

(e) Except for a modification issued to close out a contract, modifications deobligating funds shall not be issued for amounts totaling less than \$25,000.

(f) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702–70(a) through (e). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(g) A class deviation from the conditions set forth in paragraphs 1832.702–70(a) through (e) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. This deviation exists with the understanding that the contracts will be fully funded when funds become available.

[FR Doc. 02–4076 Filed 2–19–02; 8:45 am]

BILLING CODE 7510–01–P