

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823, 1836 and 1852

RIN 2700-AC33

Safety and Health

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by revising the prescription for the use of NASA Safety and Health solicitation provisions and contract clauses; removing references to the Service Contract Act (SCA) and Walsh-Healey Public Contracts Act regulations; adding references to the Occupational Safety and Health Act (OSHA) and Department of Transportation (DOT) regulations; and clarifying when a Safety and Health Plan is to be included in a contract or solicitation. This final rule also requires the use of NASA's safety and health provisions instead of the FAR Accident Prevention clause, and allows for oral notification, with written confirmation to the contractor, of Safety and Health noncompliance that may pose a serious or imminent danger to safety and health.

EFFECTIVE DATE: April 9, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Cullen, (202) 358-1784, jcullen@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the *Federal Register* on December 13, 2001 (66 FR 64391-64392). One comment was received from industry. The comment was supportive of the rule and did not recommend any changes. This final rule adopts the proposed rule without change. NASA has required the inclusion of a NASA Safety and Health clause and submission of a contractor Safety and Health Plan for contracts that are greater than \$1 million, involve construction, or have hazardous deliverable end items or operations. Exclusion of the clause has been allowed when the Contracting Officer determined that Walsh-Healey or Service Contract Act (if applicable) regulations constituted adequate safety and health protection. This final rule removes the dollar threshold from the Safety and Health clause prescription since safety and health requirements should be determined by the risks rather than cost of the contract requirements. Also, to assure that contractors are held to the same standards for mishap prevention as the Government, the

revised guidance requires use of a Safety and Health clause and submission of a Safety and Health Plan when performance is on a Government facility or when assessed risk warrants inclusion. This final rule also revises the conditions that must be met for excluding the clause from contracts, reflecting the greater Government and industry use of Occupational Safety and Health Administration (OSHA) and Department of Transportation (DOT), rather than Walsh-Healey or Service Contract Act safety and health regulations, and includes new NFS guidance on use of the NASA Safety and Health clause instead of the FAR Accident Prevention clause. Furthermore, this final rule makes the requirements for the use of the NASA Safety and Health clause for subcontracts consistent with prime contract requirements.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 USC 601, *et seq.*) because these changes clarify existing policy and reflect appropriate safety and health regulations.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any 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 41 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1823, 1836 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1823, 1836 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1823, 1836 and 1852 continues to read as follows:

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

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Amend section 1823.7001 in the second sentence of paragraph (c) by removing "clause" and adding "provision" in its place; and revising paragraphs (a) and (b) to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

(a) The clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

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PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3. Add section 1836.513 to read as follows:

1836.513 Accident prevention.

The contracting officer must insert the clause at 1852.223-70, Safety and Health, in lieu of FAR clause 52.236-13, Accident Prevention, and its Alternate I.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend the clause at section 1852.223-70 by revising the date of the clause; revising paragraphs (f)(1) and (g); redesignating paragraphs (h) and (i) as (i) and (j) respectively, and adding a new paragraph (h) to read as follows:

1852.223-70 Safety and Health.

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Safety and Health (April 2002)

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(f)(1) The Contracting Officer may notify the Contractor in writing of any

noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action.

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(g) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (g) and any applicable Schedule provisions and clauses, with appropriate changes of designations of the parties, in all solicitations and subcontracts of every tier, when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(h) The Contractor (or subcontractor or supplier) may exclude the provisions of paragraph (g) from its solicitation(s) and subcontract(s) of every tier when it determines that the clause is not necessary because the application of the OSHA and DOT (if applicable) regulations constitute adequate safety and occupational health protection. When a determination is made to exclude the provisions of paragraph (g) from

a solicitation and subcontract, the Contractor must notify and provide the basis for the determination to the Contracting Officer. In subcontracts of every tier above the micro-purchase threshold for which paragraph (g) does not apply, the Contractor (or subcontractor or supplier) shall insert the substance of paragraphs (a), (b), (c), and (f) of this clause).

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5. Amend the clause at section 1852.223-72 by revising the date of the clause, and revising paragraph (d) to read as follows:

1852.223-72 Safety and Health (Short Form).

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Safety and Health (Short Form) (April 2002)

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(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

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6. Revise the provision at section 1852.223-73 and the introductory text of Alternate I to the provision to read as follows:

1852.223-73 Safety and Health Plan.

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Safety and Health Plan (April 2002)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety

Manual, Appendices). The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) When applicable, the plan shall address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), and high-value equipment and property.

(c) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts that contain one or more of the following conditions:

(1) The work will be conducted completely or partly on premises owned or controlled by the government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazards warrants use of the clause.

(d) This plan, as approved by the Contracting Officer, will be included in any resulting contract.
(End of provision)

Alternate I (April 2002)

As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

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