

National Aeronautics and Space Administration



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Washington, DC 20546-0001

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MEMORANDUM FOR NASA ACQUISITION WORKFORCE

SUBJECT: NASA Guidance on Current Inflation and Economic Price Adjustments

The Office of Procurement's goal is to plan, award, and manage innovative contracting solutions to achieve NASA's mission, conduct procurements smarter and in the most effective, responsible, and efficient manner possible. In Fiscal Year (FY) 2021, NASA's procurements totaled \$20 billion, and the number of procurement actions totaled 25,020. In FY 2022, the rise in inflation in the costs of goods and services across the country has changed the contracting environment with steady price increases for goods and services, shortage of products, and erosion of purchasing power. These economic changes are impacting industries and industry partners that support NASA programs, projects, and contract awards.

NASA is evaluating existing contracting policies and procedures to determine appropriate steps to manage contracts during these inflationary times. The Federal Acquisition Regulation (FAR) includes policies, procedures, and guidance for selecting and using a specific acquisition. Certain contract types include elements that Contracting Officers (COs) may consider for NASA contracts such as Fixed Price Economic Price Adjustment (EPA) clauses that may be necessary for future contracts. Use of a fixed price contract with EPA allows for changes in the price, either upward or downward, under certain circumstances. When a contract with an EPA clause is in place, the CO can make price adjustments when there are market fluctuations that are beyond the contractor's control.

This memorandum emphasizes existing FAR and NASA FAR Supplement (NFS) guidance that may be considered in order to recognize cost increases due to inflation on future contract awards. FAR 16.203-1, provides guidance on the use of a fixed-price contract with an EPA clause which operates to shift the price upward or downward depending on the certain circumstances.

The contract type determines use of EPA clauses, and these clauses may be considered to assist in mitigating risks to successful execution of the contract requirements in uncertain economic times.

Cost Type Contracts. The Government accepts the risks of any cost increases under cost type contracts. The contractor is required under the FAR clause 52.232-20, Limitation of Costs, and FAR clause 52.232-22, Limitation of Funds to notify the CO during contract performance when the costs are expected to exceed the contract's funded amount. Upon notification, the

Government may increase the contracting funding to allow for continued contract performance; the contractor is not obligated to continue performance beyond what can be accomplished within the contract's funded amount.

Fixed Priced Contracts. The Contractor assumes the risks of any increase in prices under fixed priced contracts. An EPA clause in fixed-priced contracts may be appropriate when market conditions are unstable thus causing inflation. The financial risk on firm fixed price (FFP) contracts is absorbed by the contractor which could cause significant increases in the contractor's proposed costs due to the current inflationary market conditions. Contractors also absorb the financial risk under fixed-price incentive fee contracts when the actual cost is higher than the target costs. Therefore, the use of EPA clauses in fixed price contracts could protect the Government's interest by mitigating the financial risk to the contractor. FAR 16.203-4(d)(1)(i) limits use of EPA clauses based on cost indices of labor and material to contracts with an extended period of performance with significant costs to be incurred beyond one year after performance begins. In accordance with FAR 16.203-4(c)(4)(ii) EPAs are not calculated on the indirect cost (except fringe benefits as defined in FAR 31.205-6(m)) or profit. In the absence of an applicable EPA contract clause, there is no authority for the Government to provide relief for unanticipated inflation under a FFP contract.

EPA clause provides for upward and/or downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types: (1) Adjustments based on established prices, (2) Adjustments based on actual costs of labor or material, and (3) Adjustments based on cost indexes of labor or material (FAR 16.203-1). NASA COs shall contact the Headquarters Office of Procurement, Procurement Management and Policy Division for specific guidance on preparing clauses using cost indexes (NFS 1816.203-4(d)(2)).

Best Practice Guidance for COs. As stated in FAR 16.203-3, Limitations, a fixed-price contract with EPA shall not be used unless the CO determines that it is necessary to either (1) protect the contractor and the Government against significant fluctuations in labor or material costs or (2) to provide for contract price adjustment in the event of changes in the contractor's established prices. COs shall take the following steps, as needed:

- 1) Ensure that the contingency allowances covered by the EPA clause are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under the EPA clause.
- 2) COs may request specific guidance from the NASA Headquarters Office of Procurement, Procurement Management and Policy Division when anticipating use of an EPA clause. This office will consult and coordinate use of the EPA clause with the Enterprise Pricing Office.
- 3) Use of EPA clauses require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Headquarters, Office of Procurement, Procurement, Strategic Operations Division in accordance with NFS 1816.203-4(d)(2) and reviewed by appropriate Headquarter offices to include the Office of the General Counsel.
- 4) In addition to the determination required by FAR 16.203-3, the CO shall coordinate

with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at FAR 52.216-4 (NFS 1816.203-4).

The FAR and NFS include contracting guidance to ensure appropriate measures are available to COs when developing contracting solutions to meet program needs in support of NASA's mission, while maintaining the public's trust and fulfilling public policy objectives. These unprecedented times may require use of appropriate contracting flexibilities to ensure the Government and our industry partners can meet their obligations under contracts. If it is necessary to use the FFP EPA contract type or to include an EPA clause in a contract, COs must ensure that use of the EPA clauses is appropriate and fair, and provides appropriate risk mitigation for both the Government and the contractor.

I appreciate your cooperation and continued commitment to supporting NASA's mission. If you have any questions, please contact Deborah Stone, Senior Procurement Analyst, Procurement Management and Policy Division at Deborah.h.stone@nasa.gov and (256) 542-7238.

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