



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-10
April 9, 1998

EQUITABLE ADJUSTMENTS UNDER CONTRACTS FOR CONSTRUCTION, DISMANTLING, DEMOLISHING, OR REMOVING IMPROVEMENTS

PURPOSE: To set forth an agency-wide clause that may be used for equitable adjustments under contracts for construction, dismantling, demolishing, or removing improvements that are contemplated to be fixed-price and exceed the simplified acquisition threshold.

BACKGROUND: Several of the centers have routinely used clauses containing ceilings on indirect costs and profit as a means for handling equitable adjustments under construction contracts. In order to provide consistency and eliminate the need for centers to establish their own clauses, an Agency-wide clause was developed. Neither the use of the clause, nor the ceiling rates contained in it are mandatory. Flexibility is provided so that the clause is only used when appropriate and to allow for differences, such as terminology, that exist in the construction industry in different parts of the United States. Although not mandatory, the ceiling rates in the clause are benchmarks as to what is considered to be reasonable based on NASA's experience and that of the General Services Administration and the Department of Veterans Affairs, agencies which also use similar clauses that contain the same ceiling rates.

REGULATION: Parts 1843 and 1852 are amended as set forth in the enclosed replacement pages to the NFS.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1843, 52:3, 52:4, 52:73, 52:74, 52:75, 52:76, 52:77, 52:78, 52:78.1 (added), 52:91, 52:92, 52:93, 52:94, 52:95, 52:96, 52:97 and 52:98 to the NFS. In PN 97-9, regulatory language was inadvertently dropped from pages 52:19 and 52:20. That language has been recovered, and pages 52:19 and 52:20 are reissued.

REGULATORY COMPLIANCE: This PN was published as a final rule in the Federal Register (63 FR 17339-17340, dated April 9, 1998).

EFFECTIVE DATE: This PN is effective as dated and shall remain in effect until canceled or superseded.

HEADQUARTERS CONTACT: Mr. Joseph Le Cren, (202) 358-0444, e-mail: joseph.lecren@hq.nasa.gov.

R. Scott Thompson

Director, Contract Management Division

Enclosures

Distribution:

NFSD List

**PART 1843
CONTRACT MODIFICATIONS**

TABLE OF CONTENTS

SUBPART 1843.2 CHANGE ORDERS

1843.205 Contract clauses.

1843.205-70 NASA contract clauses.

SUBPART 1843.70 UNDEFINITIZED CONTRACT ACTIONS

1843.7001 Definitions.

1843.7002 Policy.

1843.7003 Procedures.

1843.7004 Exceptions.

1843.7005 Definitization.

SUBPART 1843.71 SHARED SAVINGS

1843.7101 Shared Savings Program.

1843.7102 Solicitation provision and contract clause.

PART 1843
CONTRACT MODIFICATIONS
Subpart 1843.2--Change Orders

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243-1, Changes--Fixed Price; FAR 52.243-2, Changes--Cost Reimbursement; FAR 52.243-3, Changes--Time-and-Material or Labor-Hours; and FAR 52.243-4, Changes, the period within which a contractor must assert its rights to an equitable adjustment may be varied not to exceed 60 calendar days.

1843.205-70 NASA contract clauses.

(a)(1) The contracting officer may insert in contracts a clause substantially the same as 1852.243-70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract. A local format may be substituted for the MIL-STD-973 format.

(2) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer may insert a clause substantially as stated at 1852.243-72, Equitable Adjustments, in solicitations and contracts for -

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

Subpart 1843.70-- Undefinitized Contract Actions

1843.7001 Definitions.

"Undefinitized contract action (UCA)" means a unilateral or bilateral contract modification or delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and their modifications are governed by subpart 1816.6.)

1843.7002 Policy.

Undefinitized contract actions shall be executed by contracting officers on an exception basis and shall be limited to the minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

1843.7003 Procedures.

(a) Issuance of undefinitized contract actions with a Government estimated cost or price over \$1,000,000 must be approved in writing by the Center Director. This approval authority is not delegable. Issuance of undefinitized contract actions with a Government estimated cost or price less than or equal to \$1,000,000 shall also be minimized but may be approved on an exception basis in accordance with installation procedures.

(b)(1) Undefinitized contract actions exceeding \$1,000,000 approved by the Center Director shall be issued as bilateral agreements setting forth a ceiling price or "not to exceed" estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the "not to exceed" estimated cost figure shall be non-fee bearing. The ceiling price or "not to exceed" estimated cost figures shall be separately identified in the UCA instrument from the pricing structure of the basic contract.

(2) The Center Director may waive the ceiling price or "not to exceed" estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than \$1,000,000 and not excepted under subpart 1843.7004, a 180 day funding profile shall be obtained from the contractor prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than \$1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver

shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

1843.7004 Exceptions.

(a) Exceptions to the requirement for Center Director approval for issuance of undefinitized contract actions are--

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modifications resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modifications to letter contracts.

(b) The contract file for any of the modifications in paragraph (a) of this section shall cite the exception and include complete supporting rationale for its applicability.

1843.7005 Definitization.

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitize UCAs within 180 days from date of issuance.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

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 are 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 and AO procedures, or the SBIR and STTR programs.

1852.234-70 Phased Procurement Using Down-Selection Procedures.

1852.234-71 Phased Procurement Using Progressive Competition Down-Selection Procedures.

1852.235-70 Center for AeroSpace Information.

1852.235-71 Key Personnel and Facilities.

1852.235-72 Instructions for Responding to NASA Research Announcements.

1852.236-71 Additive or Deductive Items.

1852.236-72 Bids with Unit Prices.

1852.236-73 Hurricane Plan.

1852.236-74 Magnitude of Requirement.

1852.237-70 Emergency Evacuation Procedures.

1852.237-71 Pension Portability.

1852.237-72 Identification of Uncompensated Overtime.

1852.239-70 Alternate Delivery Points.

1852.241-70 Renewal of Contract.

1852.242-70 Technical Direction.

1852.242-71 Travel Outside of the United States.

1852.242-72 Observance of Legal Holidays.

1852.242-73 NASA Contractor Financial Management Reporting.

1852.243-70 Engineering Change Proposals.

1852.243-71 Shared Savings.

1852.243-72 Equitable Adjustments.

1852.244-70 Geographic Participation in the Aerospace Program.

1852.245-70 Contractor Requests for Government-Owned Equipment.

1852.245-71 Installation-Accountable Government Property.

1852.245-72 Liability for Government Property Furnished for Repair or Other Services.

1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors.

1852.245-74 Contractor Accountable On-Site Government Property.

1852.245-75 Title to Equipment.

1852.245-76 List of Government-Furnished Property.

1852.245-77 List of Installation-Accountable Property and Services.

1852.245-79 Use of Government-Owned Property.

1852.245-80 Use of Government Production and Research Property on a No-Charge Basis.

1852.246-70 Mission Critical Space System Personnel Reliability Program.

1852.246-71 Government Contract Quality Assurance.

1852.246-72 Material Inspection and Receiving Report.

1852.246-73 Human Space Flight Item.

1852.247-71 Protection of the Florida Manatee.

1852.247-72 Advance Notice of Shipment.

1852.247-73 Shipment by Government Bills of Lading.

1852.249-72 Termination (Utilities).

SUBPART 1852.3 PROVISION AND CLAUSE MATRIX

1852.300 Scope of Subpart.

1852.301 Solicitation Provisions and Contract Clauses (Matrix).

PART 1852 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.000 Scope of part.

This part, in conjunction with FAR Part 52, (a) sets forth the provisions and clauses prescribed in the NFS, (b) gives instructions for their use, and (c) presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

Subpart 1852.1--Instructions for Using Provisions and Clauses

1852.101 Using Part 52.

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of Subpart 1801.3 are met.

(e)(1) The NFS matrix in Subpart 1852.3 is formatted similarly to that in the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses.

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b)(i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, DFRC, GSFC, CW, JSC, KSC, LARC, LERC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from -90 to -199. For example, the first Johnson Space Center (JSC) provision or clause relating to Part 36 of the FAR or NFS shall be

JSC 52.236-90, the second JSC 52.236-91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

(End of clause)
ALTERNATE I
(SEPTEMBER 1993)

As prescribed in 1816.406-70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is \$_. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [\$total potential award fee amount, including any base fee].

(End of clause)

1852.216-87 Submission of Vouchers for Payment

As prescribed in 1816.307-70(e), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT
(MARCH 1998)

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b) (1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer.

(c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to:

[Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

(i) Copy 1 NASA Contracting Officer

(ii) Copy 2 Auditor

(iii) Copy 3 Contractor

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to:

[insert the mailing address for submission of fee vouchers]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

1852.216-88 Performance Incentive.

As prescribed in 1816.406-70(f), insert the following clause:

**PERFORMANCE INCENTIVE
(JANUARY 1997)**

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: **(1)**

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) **Standard performance level.** At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for **(1)** is established as follows: **(2)**

(c) **Positive incentive.** The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of \$ **(3)** per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: **(4)**

(d) **Negative incentive.** The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of \$ **(5)**. The units of measurement and the incentive amounts associated with achieving each unit are shown below: **(6)**

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the

Contractor's on-site personnel work during a holiday other than those in paragraph (a) above, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.

**ALTERNATE II
(SEPTEMBER 1989)**

As prescribed in 1842.7001(c), add the following paragraphs (e) and (f):

(e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of above, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

1852.242-73 NASA Contractor Financial Management Reporting.

As prescribed in 1842.7202, insert the following clause:

**NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING
(JULY 1997)**

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Policy Guidance (NPG) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost occur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

1852.243-70 Engineering Change Proposals.

As prescribed in 1843.205-70(a)(1), insert the following clause, modified to suit contract type:

ENGINEERING CHANGE PROPOSALS (FEBRUARY 1998)

(a) Definitions.

"ECP" means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

"MIL-STD-973" means a DOD publication entitled, Military Standard Configuration Control - Engineering Changes, Deviations and Waivers, 15 July 1988.

(b) Either party to the contract may originate ECPs. The originator shall forward proposed ECPs to the Contracting Officer. Unless another process has been approved by the Government or specified by the Contracting Officer, the ECP formats, forms and controls specified in MIL-STD-973 shall be used. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a "not-to-exceed" ___ [price or estimated cost] increase or decrease adjustment amount, if any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the contractor regarding the "not-to-exceed" ___ [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) After submission of a contractor initiated n ECP, the contracting officer may require the contractor to submit the following information:

(1) Cost or pricing data in accordance with FAR 15.403-5 if the proposed change meets the criteria for its submission under FAR 15.403-4; or

(2) Information other than cost or pricing data adequate for contracting officer determination of price reasonableness or cost realism. The contracting officer reserves the right to request additional information if that provided by the contractor is considered inadequate for that purpose. If the contractor claims applicability of one of the exceptions to submission of cost or pricing data, it shall cite the exception and provide rationale for its applicability.

(e) If the ECP is initiated by NASA, the contracting officer shall specify the cost information requirements, if any.

(End of clause)
ALTERNATE I
(JULY 1997)

As prescribed in 1843.205-70(a)(2), add the following paragraph (f), modified to suit contract type, to the basic clause:

(f) If the ___ [price or estimated cost] adjustment proposed for any Contractor-originated ECP is ___ [insert a percent or dollar amount of the contract price or estimated cost] or less, the ECP shall be executed with no adjustment to the contract ___ [price or estimated cost].

ALTERNATE II
(SEPTEMBER 1990)

As prescribed in 1843.205-70(a)(3), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the

contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

1852.243-71 Shared Savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS (MARCH 1997)

(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 mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) **Cost Reduction Proposal** - 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 provision, 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 provision, 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 provision, 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 Cost Reduction Proposal.

(c) General. The Contractor will develop, prepare and submit CRP's 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 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, CRP's 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 Officers 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)

1852.243-72 Equitable Adjustments.

As prescribed in 1843.205-70(b), insert the following clause.

**EQUITABLE ADJUSTMENTS
(APRIL 1998)**

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the "Suspension of Work" clause (FAR 52.242-14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead(Percent)	Profit(Percent)	Commission
To Contractor on work performed by other than its own forces	-----	-----	10 percent
To first tier subcontractor on work performed by its subcontractors	-----	-----	10 percent
To Contractor and/or subcontractors on work performed with their own forces	10 percent	10 percent	-----

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

1852.244-70 Geographic Participation in the Aerospace Program.

As prescribed in 1844.204-70, insert the following clause:

**GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM
(APRIL 1985)**

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of \$100,000 and over.

(End of clause)