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EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 1850.1 - Extraordinary Contractual Actions

1850.102 Delegation of and limitations of exercise of authority.

1850.102-2 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

1850.103 Contract adjustments.

1850.103-5 Processing cases.

1850.103-570 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law, including in the forwarding letter --

(1) The nature of the case;

(2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

1850.103-6 Disposition.

1850.103-670 Implementation of the Contract Adjustment Board's decision.

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law.

1850.104 Residual powers.

1850.104-3 Special procedures for unusually hazardous or nuclear risks.

(a) Indemnification requests.

(1) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(iii) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

(b) Action on indemnification requests.

(1) If recommending approval, the contracting officer shall forward the required information to the Assistant Administrator for Procurement, Program Operations Division, along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.103-6, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

(C) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.104-3(b) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer

shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

1850.104-370 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.104-3. The prime contractor's request shall provide information responsive to 1850.104-3, FAR 50.104-3, and FAR 50.104-3(b)(1)(i), (ii), (iv), (v), and (vii). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

1850.104-70 Lead NASA installation.

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.