

243.204-70-5

the not-to-exceed price has been obligated by the Government, the limitation on obligations before definitization may be increased to no more than 75 percent (*see* 232.102-70 for coverage on provisional delivery payments).

(b) Obligations should be consistent with the contractor's requirements for the undefinitized period.

[75 FR 48277, Aug. 10, 2010]

243.204-70-5 Exceptions.

(a) The limitations in 243.204-70-2, 243.204-70-3, and 243.204-70-4 do not apply to unpriced change orders for the purchase of initial spares.

(b) The limitations in 243.204-70-4(a) do not apply to unpriced change orders for ship construction and ship repair.

(c) The head of the agency may waive the limitations in 243.204-70-2, 243.204-70-3, and 243.204-70-4 for unpriced change orders if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

[75 FR 48277, Aug. 10, 2010]

243.204-70-6 Allowable profit.

When the final price of an unpriced change order is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract; and

(c) The extent to which costs have been incurred prior to definitization of the contract action (*see* 215.404-71-3(d)(2)). The risk assessment shall be documented in the contract file.

[75 FR 48277, Aug. 10, 2010]

243.204-70-7 Plans and reports.

To provide for enhanced management and oversight of unpriced change orders, departments and agencies shall—

(a) Include in the Consolidated Undefinitized Contract Action (UCA)

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Management Plan required by 217.7405, the actions planned and taken to ensure that unpriced change orders are definitized in accordance with this subsection; and

(b) Include in the Consolidated UCA Management Report required by 217.7405, each unpriced change order with an estimated value exceeding \$5 million.

[75 FR 48277, Aug. 10, 2010]

243.204-71 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contract certifies the request in accordance with the clause at 252.243-7002.

(b) To determine if the dollar threshold for requiring certification is met, add together the absolute value of each cost increase and each cost decrease. *See* PGI 243.204-70(b) for an example.

(c) The certification required by 10 U.S.C. 2410(a), as implemented in the clause at 252.243-7002, is different from the certification required by the Contract Disputes Act of 1978 (41 U.S.C. 605(c)). If the contractor has certified a request for equitable adjustment in accordance with 10 U.S.C. 2410(a), and desires to convert the request to a claim under the Contract Disputes Act, the contractor shall certify the claim in accordance with FAR Subpart 33.2.

[62 FR 37147, July 11, 1997, as amended at 63 FR 11541, Mar. 9, 1998; 70 FR 67922, Nov. 9, 2005]

243.205 Contract clauses.

243.205-70 Pricing of contract modifications.

Use the clause at 252.243-7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

[56 FR 36446, July 31, 1991. Redesignated at 66 FR 49865, Oct. 1, 2001]

243.205-71 Requests for equitable adjustment.

Use the clause at 252.243-7002, Requests for Equitable Adjustment, in solicitations and contracts estimated to

exceed the simplified acquisition threshold.

[63 FR 17124, Apr. 8, 1998. Redesignated at 66 FR 49865, Oct. 1, 2001]

243.205-72 Unpriced change orders.

See the clause prescriptions at 217.7406 for all unpriced change orders with an estimated value exceeding \$5 million.

[75 FR 48278, Aug. 10, 2010]

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36447, July 31, 1991, unless otherwise noted.

Subpart 244.2—Consent to Subcontracts

244.202 Contracting officer's evaluation.

244.202-2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

[60 FR 29501, June 5, 1995]

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

[70 FR 67922, Nov. 9, 2005]

244.303 Extent of review.

Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of "commercial item" in FAR 2.101.

[67 FR 38023, May 31, 2002]

244.304 Surveillance.

(b) The ACO, or the purchasing system analyst (PSA) with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor's purchasing system. See PGI 244.304(b) for guidance on how weaknesses may arise and may be discovered.

[70 FR 67922, Nov. 9, 2005, as amended at 73 FR 4114, Jan. 24, 2008]

244.305 Granting, withholding, or withdrawing approval.

244.305-70 Granting, withholding, or withdrawing approval.

Use this subsection instead of FAR 44.305-2(c) and 44.305-3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

- (1) Present the review team's recommendations, signed by the ACO;
- (2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and
- (3) Not comment on the pending or planned decision to grant or withhold approval of the contractor's purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of