

■ 1. The authority citation for 48 CFR Parts 212, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by adding paragraph (f)(xi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xi) Use the clause at 252.232–7010, Levies on Contract Payments, as prescribed in 232.7102.

PART 232—CONTRACT FINANCING

■ 3. Sections 232.7101 and 232.7102 are revised to read as follows:

232.7101 Policy and procedures.

(a) The contracting officer shall require the contractor to—

(1) Promptly notify the contracting officer when a levy may result in an inability to perform the contract; and

(2) Advise the contracting officer whether the inability to perform may adversely affect national security.

(b) The contracting officer shall promptly notify the Director, Defense Procurement and Acquisition Policy (DPAP), when the contractor's inability to perform will adversely affect national security or will result in significant additional costs to the Government. Follow the procedures at PGI 232.7101(b) for reviewing the contractor's rationale and submitting the required notification.

(c) The Director, DPAP, will promptly evaluate the contractor's rationale and will notify the IRS, the contracting officer, and the payment office, as appropriate, in accordance with the procedures at PGI 232.7101(c).

(d) The contracting officer shall then notify the contractor in accordance with paragraph (c) of the clause at 252.232–7010 and in accordance with the procedures at PGI 232.7101(d).

232.7102 Contract clause.

Use the clause at 252.232–7010, Levies on Contract Payments, in all solicitations and contracts other than those for micro-purchases.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.232–7010 is amended by revising the clause date and paragraphs (b) and (c) to read as follows:

252.232–7010 Levies on Contract Payments.

* * * * *

LEVIES ON CONTRACT PAYMENTS (DEC 2006)

* * * * *

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 230, 252, and 253

[DFARS Case 2003–D014]

Defense Federal Acquisition Regulation Supplement; Contract Pricing and Cost Accounting Standards

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing contract pricing matters and cost accounting standards administration. The rule implements statutory provisions regarding exceptions to cost or pricing data requirements and waiver of cost accounting standards, and relocates internal DoD procedures relating to pricing considerations and cost accounting standards to the DFARS companion resource, Procedures, Guidance, and Information.

DATES: *Effective Date:* December 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2003–D014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates DFARS text addressing contract pricing matters and cost accounting standards administration. The DFARS changes include—

- Addition of text at 215.403–1 and 230.201–5 to implement Section 817 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) regarding exceptions to cost or pricing data requirements and waiver of cost accounting standards.

- Deletion of 215.404–1(d), Cost realism analysis, because FAR 15.404–1 contains sufficient policy on this subject.

- Deletion of unnecessary introductory text at redesignated 215.404–71–4(f), Facilities capital employed, Values: Normal and designated ranges.

- Relocation of the definition of “Acceptable estimating system” from 215.407–5–70(a)(1) to the contract clause at 252.215–7002, Cost Estimating System Requirements; elimination of 215.407–5–70(b)(1)(iii) and (iv) and relocation of the language to the new definition at 252.215–7002(a); and deletion of duplicative language at 252.215–7002(b).

- Removal of 230.7000, Contract facilities capital estimates; 230.7001, Use of DD Form 1861; and 230.7002, Preaward facilities capital applications; and relocation of text on these subjects to 215.404–71–4, Weighted guidelines method—Facilities capital employed, since these sections pertain to the

calculation of weighted guidelines for profit, rather than cost accounting standards.

- Elimination of 230.7003, Postaward facilities capital applications, and 230.7004–1, Forms CASB–CMF, since these sections duplicate Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital; FAR 31.205–10, Cost of Money; and the implementing contract clauses.

- Elimination of the definitions of “intangible capital asset” and “tangible capital asset” at 230.7100(a) and (b), since these definitions are provided in the cost accounting standards; elimination of the definition of “cost of money rate” at 230.7100(c), because it conflicts with cost accounting standards; and elimination of the definition of “representative investment” at 230.7100(d), because it is unnecessary.

- Elimination of 230.7101, Calculations, and 230.7102, Determining imputed cost of money, because they are adequately covered in CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417).

- Removal of 230.7103, Preaward capital employed application, and relocation of text on this subject to 215.404–73(b)(2)(i), Offsets for facilities capital cost of money, since it applies to offsets in determining profit, rather than cost accounting standards.

- Relocation of the following text to the DFARS companion resource, Procedures, Guidance, and Information (PGI), at <http://www.acq.osd.mil/dpap/dars/pgi>.

- 215.403–5, Instructions for submission of cost or pricing data or information other than cost or pricing data.

- 215.404–2, Information to support proposal analysis.

- 215.404–3, Subcontract pricing considerations.

- 215.404–70, DD Form 1547, Record of Weighted Guidelines Method Application.

- 215.404–76, Reporting profit and fee statistics.

- 215.406–1, Prenegotiation objectives.

- 215.406–3, Documenting the negotiation.

- 215.407–4, Should-cost review.

- 215.407–5–70(e) and (f), Estimating systems—Disclosure, maintenance, and review requirements.

- 215.470(b) and (c), Estimated data prices, except that the first sentence of (b) remains in DFARS, and is revised for clarity.

- 230.201–5(a)(1), Waiver (partial relocation).

- 230.7004–2, DD Form 1861 (relocated to PGI 215.404–71–4(c), consistent with the relocation of 230.7000, 230.7001, and 230.7002 to DFARS 215.404–71–4.

- 253.215–70, DD Form 1547, Record of Weighted Guidelines Application.

DoD published a proposed rule at 70 FR 75440 on December 20, 2005. One industry association submitted comments on the proposed rule. The industry association questioned the proposed relocation of the weighted guidelines profit analysis procedures from DFARS Subpart 15.4 to PGI, since considerations that DoD contracting officers use to develop profit objectives have a significant impact on industry. DoD agrees with this comment and has retained the weighted guidelines procedures in DFARS Subpart 215.4, with the exception of the text at 215.404–70, which merely provides a general description of the DD Form 1547 and its use, and the text at 215.404–76, which deals exclusively with internal DoD reporting of profit and fee statistics.

Additional differences between the proposed and final rules include—

215.403–1(c)(1)—This text, which addresses standards for exceptions from cost or pricing data requirements, is retained in the DFARS, since these standards affect industry.

215.403–1(c)(3)—This text is amended to clarify that the determination as to whether a commercial item exception applies is made by the contracting officer.

215.406–1—The reference to corresponding PGI text is revised to indicate that the PGI procedures are mandatory.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, clarifies, and relocates DFARS text, but makes no significant change to DoD contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215, 230, 252, and 253

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 215, 230, 252, and 253 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 215, 230, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.403–1 is amended as follows:

■ a. By adding paragraph (c)(3);

■ b. By redesignating paragraphs (c)(4)(A) and (B) as paragraphs (c)(4)(C) and (D) respectively; and

■ c. By adding new paragraphs (c)(4)(A) and (B) to read as follows:

215.403–1 Prohibition on obtaining cost or pricing data.

(c) * * *

(3) *Commercial items.* By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Procurement and Acquisition Policy (DPAP), ATTN: DPAP/CPF, of all contracting officer determinations that commercial item exceptions apply under FAR 15.403–1(b)(3), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See PGI 215.403–1(c)(3) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(4) * * *

(A) The head of the contracting activity may, without power of delegation, apply the exceptional circumstances authority when a determination is made that—

(1) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without the granting of the waiver;

(2) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data; and

(3) There are demonstrated benefits to granting the waiver. See PGI 215.403–1(c)(4)(A) for guidance applicable to waivers for part of a proposal and unpriced options.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, DPAP, ATTN: DPAP/CPF, of all waivers granted under

FAR 15.403–1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See PGI 215.403–1(c)(4)(B) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

* * * * *

■ 3. Section 215.403–5 is revised to read as follows:

215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

When the solicitation requires contractor compliance with the Contractor Cost Data Reporting System, follow the procedures at PGI 215.403–5.

215.404–1 [Amended]

■ 4. Section 215.404–1 is amended by removing paragraph (d).

■ 5. Sections 215.404–2 and 215.404–3 are revised to read as follows:

215.404–2 Information to support proposal analysis.

See PGI 215.404–2 for guidance on obtaining field pricing or audit assistance.

215.404–3 Subcontract pricing considerations.

Follow the procedures at PGI 215.404–3 when reviewing a subcontractor's proposal.

■ 6. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text to read as follows:

215.404–4 Profit.

(b) * * *

(1) Contracting officers shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74, 216.405–2, and FAR 16.405–2) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

■ 7. Section 215.404–70 is revised to read as follows:

215.404–70 DD Form 1547, Record of Weighted Guidelines Method Application.

Follow the procedures at PGI 215.404–70 for use of DD Form 1547 whenever a structured approach to profit analysis is required.

■ 8. Section 215.404–71–4 is amended as follows:

■ a. By redesignating paragraphs (b) through (d) as paragraphs (e) through (g) respectively;

■ b. By adding new paragraphs (b) through (d); and c. In newly designated paragraph (f), by removing “These are the normal values and ranges. They apply to all situations.”. The added text reads as follows:

215.404–71–4 Facilities capital employed.

* * * * *

(b) *Contract facilities capital estimates.* The contracting officer shall estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB–CMF and cost of money factors (48 CFR 9904.414 and FAR 31.205–10); and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

(c) *Use of DD Form 1861.* See PGI 215.404–71–4(c) for obtaining field pricing support for preparing DD Form 1861.

(1) *Purpose.* The DD Form 1861 provides a means of linking the Form CASB–CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(i) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(ii) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

(2) *Completion instructions.* Complete a DD Form 1861 only after evaluating the contractor's cost proposal,

establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(i) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(ii) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(iii) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(iv) Total contract facilities cost of money is the sum of the yearly amounts.

(v) Since the facilities capital cost of money factors reflect the applicable cost

of money rate in Column 1 of Form CASB–CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

(d) *Preaward facilities capital applications.* To establish cost and price objectives, apply the facilities capital cost of money and capital employed as follows:

(1) *Cost of Money.* (i) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(ii) *Profit Objective.* When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(2) *Facilities Capital Employed.* Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at 215.404–71–4.

* * * * *

■ 9. Section 215.404–73 is amended by revising paragraph (b)(2)(i) to read as follows:

215.404–73 Alternate structured approaches.

* * * * *

(b) * * *

(2) * * *

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money under Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital (48 CFR 9904.414). Cost of money under CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417), should not be used to reduce the overall prenegotiation profit objective. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

* * * * *

■ 10. Section 215.404–76 is revised to read as follows:

215.404–76 Reporting profit and fee statistics.

Follow the procedures at PGI 215.404–76 for reporting profit and fee statistics.

■ 11. Sections 215.406–1 and 215.406–3 are revised to read as follows:

215.406–1 Prenegotiation objectives.

Follow the procedures at PGI 215.406–1 for establishing prenegotiation objectives.

215.406–3 Documenting the negotiation.

Follow the procedures at PGI 215.406–3 for documenting the negotiation.

■ 12. Section 215.407–4 is revised to read as follows:

215.407–4 Should-cost review.

See PGI 215.407–4 for guidance on determining whether to perform a program or overhead should-cost review.

■ 13. Section 215.407–5–70 is amended by revising paragraphs (a)(1), (b)(1), (e), and (f) to read as follows:

215.407–5–70 Disclosure, maintenance, and review requirements.

(a) * * *

(1) *Acceptable estimating system* is defined in the clause at 252.215–7002, Cost Estimating System Requirements.

* * * * *

(b) * * *

(1) DoD policy is that all contractors have acceptable estimating systems that consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.

* * * * *

(e) *Review procedures.* Follow the procedures at PGI 215.407–5–70(e) for establishing and conducting estimating system reviews.

(f) *Disposition of survey team findings.* Follow the procedures at PGI 215.407–5–70(f) for disposition of the survey team findings.

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■ 14. Section 215.470 is amended by revising paragraph (b), removing paragraph (c), and redesignating paragraph (d) as paragraph (c). The revised text reads as follows:

215.470 Estimated data prices.

* * * * *

(b) When data are required to be delivered under a contract, include DD Form 1423, Contract Data Requirements List, in the solicitation. See PGI 215.470(b) for guidance on the use of DD Form 1423.

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PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 15. Section 230.201–5 is revised to read as follows:

230.201–5 Waiver.

(a)(1)(A) The military departments and the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)—

(1) May grant CAS waivers that meet the conditions in FAR 30.201–5(b)(1); and

(2) May grant CAS waivers that meet the conditions in FAR 30.201–5(b)(2), provided the cognizant Federal agency official granting the waiver determines that—

(i) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, as applicable, without granting the waiver;

(ii) The price can be determined to be fair and reasonable without the application of the Cost Accounting Standards; and

(iii) There are demonstrated benefits to granting the waiver.

(B) Follow the procedures at PGI 230.201–5(a)(1) for submitting waiver requests to the Director, Defense Procurement and Acquisition Policy.

(2) The military departments shall not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e) By November 30th of each year, the military departments shall provide a report to the Director, Defense Procurement and Acquisition Policy, ATTN: DPAP/CPF, of all waivers granted under FAR 30.201–5(a), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See PGI 230.201–5(e) for format and guidance for the report. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated report to the CAS Board and the congressional defense committees.

Subparts 230.70 and 230.71 [Removed]

■ 16. Subparts 230.70 and 230.71 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 17. Section 252.215–7002 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a), by revising the paragraph heading and adding a definition of “Acceptable estimating system”; and

■ c. By revising paragraph (b). The revised and added text reads as follows:

252.215–7002 Cost Estimating System Requirements.

* * * * *

COST ESTIMATING SYSTEM REQUIREMENTS (DEC 2006)

(a) *Definitions.*

Acceptable estimating system means an estimating system that—

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor’s related management systems; and

(4) Is subject to applicable financial control systems.

* * * * *

(b) *General.* The Contractor shall establish, maintain, and comply with an acceptable estimating system.

* * * * *

PART 253—FORMS

■ 18. Section 253.215–70 is revised to read as follows:

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

Follow the procedures at PGI 253.215–70 for completing DD Form 1547.

[FR Doc. E6–20396 Filed 11–30–06; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 060724200–6302–03; I.D. 052506A and 071106G]

RIN 0648–AT95 and 0648–AT94

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish, Crustacean, and Precious Corals Fisheries; Permit and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations implementing the amendments to the