

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Randal J. Miller, requesting the allotment of Channel 252A to Tower Hill, Illinois, as that community's first local transmission service. Channel 252A can be allotted to Tower Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (5.6 miles) south. The coordinates for Channel 252A at Tower Hill are North Latitude 39-18-27 and West Longitude 88-59-22.

**DATES:** Comments must be filed on or before March 20, 1995, and reply comments on or before April 4, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randal J. Miller, 111 West Main Cross, P.O. Box 169, Taylorville, Illinois 62568 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-13, adopted January 18, 1995, and released January 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1516 and 1552

[FRL-5147-4]

#### Acquisition Regulation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the EPA Acquisition Regulation (EPAAR) coverage on cost-plus-award fee (CPAF) contracts. The proposed rule is necessary to update and clarify EPA policy regarding CPAF contracts, and to give Contracting Officers greater flexibility in tailoring award fee plans to individual contracts.

**DATES:** Written comments on this proposed rule must be received on or before March 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW, Washington, DC 20460, Attn: Louise Senzel (202) 260-6204.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule replaces sections 1516.404-270 through 1516.404-274 and deletes 1516.404-275 through 1516.404-2710 of the EPAAR. EPA has determined that codification of the Agency's procedures for the award fee process is unnecessary since these procedures are internal to EPA. Consequently, EPA will include these internal procedures in an Agency Directive. Internal procedures are those which encompass any aspect of preparing, establishing, modifying, and administering the award fee plan. The revised EPAAR will only state the Agency's general policy and objectives in using award fee contracts.

Award fee may be earned only when the contractor's performance is rated above satisfactory or excellent. No award fee may be earned if performance is rated satisfactory or unsatisfactory. This approach to cost-plus-award-fee contracts is designed to motivate contractors to achieve excellent performance and to improve cost-plus-award-fee contracting at EPA.

Section 1516.405 is revised and § 1552.216-75 is added to address base and award fee limitations in accordance with the FAR. Section 1552.216-70 is revised to clarify EPA's policy on the payment of fee under CPAF contracts.

##### B. Executive Order 12866

This is not a major rule as defined in Executive Order 12866; therefore, no review is required by the Office of Management and Budget (OMB).

##### C. Paperwork Reduction Act

The proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

##### D. Regulatory Flexibility Act

The proposed rule will not have an impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* since it does not impose any new requirements on contractors, large or small. The EPA certifies that this rule will not impact small entities. Therefore, no regulatory flexibility analysis has been prepared.

##### List of Subjects in 48 CFR Parts 1516 and 1552

Government procurement.

For the reasons set out in the preamble, parts 1516 and 1552 of title 48 of the Code of Federal Regulations are proposed to be amended as set forth below:

1. The authority citation for parts 1516 and 1552 continues to read as follows:

**Authority:** Sec 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

##### PART 1516—TYPES OF CONTRACTS

2. Subpart 1516.4 is amended by revising sections 1516.404-270 through 1516.404-274 to read as follows and by removing sections 1516.404-275 through 1516.404-2710.

##### 1516.404-270 Scope.

This subsection establishes the EPA policy for cost-plus-award-fee (CPAF) type contracts.

##### 1516.404-271 Applicability.

Contracting Officers shall consider all contract actions conforming to the limitations of FAR 16.404-2(c) as candidates for award as a CPAF contract.

##### 1516.404-272 Definitions.

(a) *Performance Evaluation Board (PEB).* Group of Government officials responsible for assessing the quality of

contract performance and recommending the appropriate fee.

(b) *Fee Determination Official.* Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

#### 1516.404-273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed "above satisfactory" or "excellent" for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

#### 1516.404-274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (c) of 1516.404-273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

3. Section 1516.405 is revised to read as follows:

#### 1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216-70, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216-75, Base Fee and Award Fee Proposal (XXX 1994), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages in accordance with FAR 15.903(d).

### PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1552.216-70 is revised to read as follows:

#### 1552.216-70 Award fee.

As prescribed in 1516.405(a), insert the following clause:

#### AWARD FEE (XXX 1994)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO) and are not subject to appeal under the Disputes clause.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of Clause)

5. Section 1552.216-75 is added to read as follows:

#### 1552.216-75 Base fee and award fee proposal

As prescribed in 1516.405(b), insert the following clause:

#### BASE FEE AND AWARD FEE PROPOSAL (XXX 1994)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee within the maximum fee limitation of \_\_\_\_\_% as stated in FAR 15.903(d). Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than \_\_\_\_\_% of the total estimated cost, excluding fee. The combined percentage of base and award fee does not exceed \_\_\_\_\_% of the total estimated cost, excluding fee.

(End of Clause)

Dated: January 6, 1995.

**Betty L. Bailey,**

*Director, Office of Acquisition Management.*

[FR Doc. 95-2334 Filed 1-30-95; 8:45 am]

BILLING CODE 6560-50-P

### DEPARTMENT OF TRANSPORTATION

#### Research and Special Programs Administration

#### 49 CFR Parts 171 and 173

[Docket No. HM-199; Notice No. 95-4]

RIN 2137-AB35

#### Enforcement of Motor Carrier Financial Responsibility; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** RSPA is withdrawing an advance notice of proposed rulemaking (ANPRM) issued under Docket HM-199, Enforcement of Motor Carrier Financial Responsibility. The ANPRM solicited comments on the merits of a petition requesting DOT to promulgate a regulation to require each person, offering a hazardous material for transportation in a cargo tank, to obtain proof of financial responsibility from the carrier. This notice removes this action from the regulatory agenda, because there is sufficient evidence that carriers are already complying with financial responsibility requirements in the Federal motor carrier safety regulations.

**FOR FURTHER INFORMATION CONTACT:** Diane LaValle, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** In 1986, RSPA received a petition for rulemaking (P-0093) from the National Tank Truck Carriers, Inc. (NTTC) requesting amendment of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to require each person who offers a hazardous material for transportation by highway in a cargo tank to obtain documentary proof that the motor carrier possesses the minimum level of financial responsibility currently prescribed by 49 CFR part 387. Since 1980, all motor carriers have been required to provide financial responsibility in varying amounts and forms, usually by insurance and/or bonding. Federal Highway Administration (FHWA) regulations require all carriers to have appropriate evidence of financial responsibility available for public inspection at their principal place of business (49 CFR 387.31). The Interstate Commerce Commission (ICC) issued conforming regulations applicable to for-hire carriers of property which required use of a form to be maintained within the carrier's public docket at ICC (49 CFR 1043.7). These actions provided methods for carriers to document the status of their financial responsibility. However, NTTC believed that a shipper should have knowledge of financial responsibility at the time it offered its shipment. NTTC also referred to the lack of adequate enforcement staff to effectively determine carrier compliance. According to NTTC, a major benefit of the requested change in