Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 85 and 86

[AMS–FRL–5333–3]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Voluntary Standards for Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: This action extends the comment period for the notice of proposed rulemaking relating to the establishment of a National Low Emission Vehicle (NLEV) program published October 10, 1995 (60 FR 52734). EPA is extending the public comment period to December 1, 1995.

DATES: Written comments on the proposed rule must be received no later than December 1, 1995.

ADDRESSES: Materials relevant to this document are contained in Public Docket A–95–27. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this document should be sent to Public Docket A–95–26, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; FAX 202–260–4000).

FOR FURTHER INFORMATION CONTACT: Michael Shields, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 260–7757. FAX (202) 260–6011.

SUPPLEMENTARY INFORMATION: EPA published a Notice of Proposed Rulemaking (NPRM) October 10, 1995 regarding the NLEV program. The public comment period was originally scheduled to end on November 9, 1995. A public hearing on the proposal was held on November 1, 1995 and the comment period is extended to December 1, 1995.

Dated: November 8, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–28388 Filed 11–16–95; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 210, 215, and 252

[DFARS Case 94–D003]

Defense Federal Acquisition Regulation Supplement Specifications and Standards

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense (DoD) has decided to withdraw a proposed rule published on December 23, 1994 (59 FR 66287). The rule proposed DFARS revisions to reflect DoD's commitment to minimizing the use of military and Federal specifications and standards and maximizing the use of performance specifications and non-Government standards. The DoD has determined that changes to DoD Instruction 5000.2 would result in more effective implementation of those commitments. Therefore, the proposed DFARS rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Melissa D. Rider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–28432 Filed 11–16–95; 8:45 am]

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48 CFR Parts 213, 214, 215, and 242

[DFARS Case 95–D715]

Defense Federal Acquisition Regulation Supplement; Past Performance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the requirements of Section 1091 of the Federal Acquisition Streamlining Act of 1994 and the requirements of OFPP Policy Letter 92–5, Past Performance Information.

DATES: Comments on the proposed rule should be submitted in writing to the DFARS Secretariat at the address shown below on or before January 16, 1996 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: IMD 3D139, PDUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite DFARS Case 95–D715 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, at (703) 602–0131. Please cite DFARS case 95–D715.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (FASA), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes in the acquisition process as a result of FASA implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

At the request of the Administrator, Office of Federal Procurement Policy, the DoD Past Performance Coordinating Council (PPCC) was tasked by the FASA DFARS Implementation Manager to develop DFARS coverage for implementing Section 1091 of FASA. There were no associated FAR changes that were published as a FASA-related rule, as the final FAR rule published in the Federal Register on March 31, 1995 (60 FR 16718) already complied with FASA requirements.

The following changes to DFARs were developed by the PPCC to implement OFPP Policy Letter 92–5, Past Performance Information, and Section 1091 of FASA:

1. DFARS Part 213 coverage has been added to provide guidance for actions using simplified acquisition procedures.

2. DFARS Part 214 coverage allows contracting officers to quantify past performance information (PPI) as a price-related factor.

3. DFARS Past 215 coverage accelerates the FAR phase-in schedule, taking two years to get to the $100,000 threshold; assures appropriate weighting of PPI; encourages (rather than mandates) use under $100,000; and requires validation of PPI before it is used.

4. DFARS 242.1502 provides requirements for preparing evaluations of performance on individual contracts; accelerates the preparation of the evaluation beyond the use requirements in 214 and 215; provides instructions for interim evaluations—this is the agency direction required by the FAR; and provides a list of required information for performing evaluations. Use of a standardized list will help the exchange of PPI among the DoD components. The list is based on the form in the OFPP Interim Guide to Best Practices for Past Performance, and has been tailored to meet the needs of DoD Components. This is not a standard form, but in the future may be an evaluation tool that can be readily accessible via electronic commerce/electronic data interchange (EC/EDI).

5. DFARS 242.1503(a) states the contracting officer specifies who provides performance evaluations (as a default, Defense Contract Management Command (DCMC) ACOs will fill out the form unless the contracting officer specifies otherwise); requires the evaluator to validate PPI with the contractor; addresses non-response by contractors who were asked for validation; and defines contract completion as the time all contract close-out actions are complete.

B. Regulatory Flexibility Act

The proposed DFARS changes may 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 requirements for use of past performance information in contract award decisions may preclude award to otherwise successful offerors. The extent of this impact is not known, although it is believed that the regulatory flexibility analysis performed for FAR Case 93–2, Past Performance Information (60 FR 16718, March 31, 1995), has already addressed the effects on small businesses. However, an Initial Regulatory Flexibility Analysis has been performed for this proposed DFARS rule. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D715 in correspondence.

C. The Paperwork Reduction Act

The proposed rule does not contain any information collection requirements which require the approval of Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213, 214, 215, and 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 213, 214, 215, and 242 be amended as set forth below:

1. The authority citation for 48 CFR parts 213, 214, 215, and 242 continues to read as follows:

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

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. The heading of Part 213 is revised to read as set forth above.

3. Section 213.106–1 is added to read as follows:

213.106–1 Soliciting competition, evaluation of quotes, and award.

(b)(1) Use of past performance information is not mandatory for solicitations less than $100,000; however, it is encouraged.

PART 214—SEALED BIDDING

4. Section 214.201–8 is added to read as follows:

214.201–8 Price related factors.

(a) An offeror's record of past performance may be used as an indication of foreseeable costs and delays and may be evaluated where these costs can be reduced to a price-related evaluation factor. For example, where a poor performance record requires a preaward survey or where a record of delivering nonconforming parts would require source inspection, and a preaward survey or source inspection would not otherwise be required, an evaluation factor covering those additional costs may be applied. The method by which these price-related factors will be determined and applied shall be included in the solicitation.

PART 215—CONTRACTING BY NEGOTIATION

5. Section 215.605 is amended by redesignating paragraph (b) as paragraph (b)(2) and by adding paragraph (b)(1)(ii) to read as follows:

215.605 Evaluation factors.

(b)(1)(ii) Notwithstanding FAR 15.605(b)(ii), past performance shall be evaluated in all competitively negotiated acquisitions in excess of $1 million issued on or after July 1, 1995, in excess of $500,000 issued on or after July 1, 1996, and in excess of $100,000 issued on or after July 1, 1997. When past performance is evaluated, it should be a significant evaluation factor or significant subfactor. Although the use of past performance is not mandatory for solicitations less than $100,000, it is encouraged. Past performance information from contractor performance evaluations shall not be used in source selections until the requirements of 242.1503(b) have been met.

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PART 242—CONTRACT ADMINISTRATION

6. Subpart 242.15 is added to read as follows:

Subpart 242.15—Contractor Performance Information

Sec.
242.1502 Policy.
242.1503 Procedures.

242.1502 Policy.

(a) Notwithstanding FAR 42.1502, contractor performance evaluations shall be prepared for all contracts in excess of $1 million effective July 1, 1995, and $100,000 effective July 1, 1996. For contracts exceeding 18 months, interim evaluations should be prepared annually.

(S–70) Agencies shall prepare an evaluation of contractor performance including the following information:

(1) Whether the report is a final or interim report;

(2) What period the report covers;

(3) The contractor's name, address, and telephone number;

(4) The contract number, value, award date, and completion date;

(5) The type of contract;

(6) A description of the requirement;

(7) An evaluation of the contractor's performance in the following areas, including a rating and supporting rationale:

(i) Quality of Product or Service;

(ii) Cost Control;
(iii) Timeliness of Performance;
(iv) Customer Satisfaction (Contracting/Business Relations);
(v) Customer Satisfaction (End User/ Business Relations); and
(vi) Rater's Overall Assessment.
(8) An evaluation of key contractor personnel for services and R&D contracts;
(9) The evaluator's name, address, telephone number and dated signature;
(10) Whether the contractor provided comments, rebuttals or additional information. If such information was provided, it shall be attached to the Government evaluation;
(11) A resolution of contractor comments; and
(12) The final review authority's name, address, phone number, and dated signature.
(S–71) Evaluations completed in accordance with paragraph (S–70) of this section shall consider the following areas:
(1) Quality of product or service. This includes the following aspects of performance:
(i) Compliance with contract requirements;
(ii) Accuracy of reports;
(iii) Appropriateness of contractor personnel assigned to the contract; and
(iv) Technical excellence of delivered supplies or services.
(2) Cost Control. This includes the following aspects of performance:
(i) Current, accurate, and complete billings;
(ii) The relationship of negotiated cost to actuals;
(iii) Cost containment initiatives; and
(iv) The number and cause of change orders issued.
(3) Timeliness of Performance. This includes the following aspects of performance:
(i) Whether the contractor met interim milestones;
(ii) Contractor's responsiveness to technical direction;
(iii) Contractor's responsiveness to contract change orders and administrative requirements;
(iv) Whether the contract was completed on time, including wrap-up and contract administration; and
(v) Whether liquidated damages were assessed.
(4) Business Relations/Customer Satisfaction. This includes the following aspects of performance:
(i) Whether the contractor effectively managed the contract effort;
(ii) How responsive the contractor was to contract requirements;
(iii) How promptly the contractor notified the Government of problems;
(iv) Whether the contractor was reasonable and cooperative;
(v) How flexible the contractor was;
(vi) Was the contractor proactive;
(vii) How effective were contractor-recommended solutions; and
(viii) Did the contractor effectively implement socio-economic programs, including compliance with requirements of the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.
(S–72) The following adjectival ratings shall be used when rating each area described in paragraph (S–71):
(1) Unsatisfactory.
(i) Quality of Product or Service. Nonconformances are compromising the achievement of contract requirements, despite the use of Agency resources.
(ii) Cost Control. Cost issues are compromising performance of contract requirements.
(iii) Timeliness of Performance. Delays are compromising the achievement of contract requirements, despite the use of Agency resources.
(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is not effective and responsive.
(2) Poor.
(i) Quality of Product or Service. Nonconformances require major Agency resources to ensure achievement of contract requirements.
(ii) Cost Control. Cost issues require major Agency resources to ensure achievement of contract requirements.
(iii) Timeliness of Performance. Delays require major Agency resources to ensure achievement of contract requirements.
(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is marginally effective and responsive.
(3) Fair.
(i) Quality of Product or Service. Nonconformances require minor Agency resources to ensure achievement of contract requirements.
(ii) Cost Control. Cost issues require minor Agency resources to ensure achievement of contract requirements.
(iii) Timeliness of Performance. Delays require minor Agency resources to ensure achievement of contract requirements.
(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is somewhat effective and responsive.
(4) Good.
(i) Quality of Product or Service. Nonconformances do not impact achievement of contract requirements.
(ii) Cost Control. Cost issues do not impact achievement of contract requirements.
(iii) Timeliness of Performance. Delays do not impact achievement of contract requirements.
(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is usually effective and responsive.
(5) Excellent.
(i) Quality of Product or Service. There are no quality problems.
(ii) Cost Control. There are no cost issues.
(iii) Timeliness of Performance. There are no delays.
(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is effective and responsive.
(6) Plus. The contractor has demonstrated an exceptional performance level in any of the four categories described in paragraph (S–71). It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as ''excellent.''

242.1503 Procedures.

(a) The contracting officer will determine who provides input on the contractor performance evaluations. Where the contract has been delegated for administration, the cognizant ACO shall complete performance evaluations unless otherwise advised by the PCO.
(b) (S–70) The agency preparing the performance evaluation shall be responsible for validating the past performance information.
(S–71) If the contractor does not respond within the period specified, the data may be assumed to be accurate and may be used in source selections.
(e) The date of completion of contract performance is the date of contract closeout.

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