

239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857-3800.

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* contact.

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.*

[FR Doc. 97-13297 Filed 5-20-97; 8:45 am]

BILLING CODE 6712-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**48 CFR Part 1515**

[FRL-5827-3]

**Acquisition Regulation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise the EPA Acquisition Regulation (EPAAR) on calculation of profit or fee. This action is the result of an Agency reassessment of its regulatory guidelines for determination of contractor profit or fee. A significant policy change will be for the contracting officer not to consider the profit/fee of any subcontractor in determining the Government's profit/fee objective. In addition, several changes are proposed to update, to streamline and to make the guidelines more closely address acquisitions for professional and technical services.

**DATES:** Comments should be submitted not later than July 21, 1997.

**ADDRESSES:** Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Larry Wyborski, Telephone: (202) 260-6482.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Order 12866**

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

**II. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

**III. Regulatory Flexibility Act**

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. There are no requirements for contractor compliance under the proposed rule.

**IV. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**V. Regulated Entities**

EPA contractors are entities potentially regulated by this action.

Category	Regulated entity
Industry .....	EPA Contractors.

**List of Subjects in 48 CFR Part 1515**

Government procurement.

For the reasons set forth in the preamble, Chapter 15 of Title 48 Code of Federal Regulations 1515 is proposed to be amended as follows:

1. The authority citation for 1515 continues to read as follows:

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

2. Subpart 1515.9 is revised to read as follows:

**Subpart 1515.9—Profit**

- 1515.900 Scope of subpart.
- 1515.902 Policy.
- 1515.903 Cost realism.
- 1515.905 Profit-analysis factors.
- 1515.970 EPA structured approach for developing profit or fee objectives.
- 1515.970-1 General.
- 1515.970-2 EPA structured system.

**Subpart 1515.9—Profit**

**1515.900 Scope of subpart.**

This subpart implements FAR subpart 15.9, and prescribes the EPA structured approach for determining profit or fee prenegotiation objectives.

**1515.902 Policy.**

(a) *EPA structured approach.* The purpose of EPA's structured approach is:

- (1) To provide a standard method of evaluation;
- (2) To ensure consideration of all relevant factors;
- (3) To provide a basis for documentation and explanation of the profit or fee negotiation objective;
- (4) To allow contractors to earn profits commensurate with the assumption of risk; and
- (5) To reward contractors who undertake more difficult work requiring higher risks.

(b) *Other methods.* (1) Contracting officers may use methods other than those prescribed in 1515.970 for establishing profit or fee objectives under the following types of contracts and circumstances:

- (i) Architect-engineering contracts;
  - (ii) Personal service contracts;
  - (iii) Management contracts, e.g., for maintenance or operation of Government facilities;
  - (iv) Termination settlements;
  - (v) Professional/technical services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor's contribution constitutes the furnishing of personnel.
  - (vi) Construction contracts; and
  - (vii) Cost-plus-award-fee contracts.
- (2) Generally, it is expected that such methods will:

(i) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under "Profit Factors," in 1515.970-2, and

(ii) Serve as a basis for documentation of the profit or fee objective.

(c) Under unusual circumstances, the CCO may specifically waive the

requirement for the use of the guidelines. Such exceptions shall be justified in writing, and authorized only in situations where the guidelines method is unsuitable.

(d) The contracting officer may not consider subcontractor profit/fee as part of the basis for determining the contractor's profit/fee.

**1515.903 Cost realism.**

The EPA structured approach is not required when the contracting officer is evaluating cost realism in a competitive acquisition.

**1515.905 Profit-analysis factors.**

Profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.905-1, and additional factors authorized by FAR 15.905-2 to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.970-2.

**1515.970 EPA structured approach for developing profit or fee objectives.**

**1515.970-1 General.**

(a) The Agency's policy is to utilize profit to attract contractors who possess talents and skills necessary to the accomplishment of the objectives of the Agency, and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relevant factors be considered, and that fair and reasonable amounts be negotiated which give the contractor a profit objective commensurate with the nature of the work to be performed, the contractor's input to the total performance, and the risks assumed by the contractor.

(b) To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and EPAAR 1515.970-2(a)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract's overall effort, and the range of weights to be applied to each profit factor.

**1515.970-2 EPA structured system.**

(a)(1) *Profit/fee factors.* The factors set forth below, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

**CONTRACTOR'S INPUT TO TOTAL PERFORMANCE**

	Weight range (percent)
Direct material .....	1 to 4
Professional/technical services ....	8 to 15
Professional/technical overhead ...	6 to 9
Subcontractors .....	1 to 4
Other direct costs .....	1 to 3
General and administrative expenses.	5 to 8
Contractor's assumption of contract cost risk.	0 to 6

(2) The contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee (see FAR 15.903(c)). The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205-10, and appendix B of the FAR (48 CFR 9904.404).

(4) After computing a total dollar profit or fee for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900-2 to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed above are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code.

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, a special factor of -3 percent shall be assigned in all cases.

(b) Assignment of values to specific factors—

(1) *General.* In making a judgment on the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluation set forth in this paragraph.

(2) *Contractor's input to total performance.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is separate from the contractor's responsibility for contract performance, takes into account what resources are necessary, and the creativity and ingenuity needed for the contractor to perform the statement of work successfully. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value, quantity, and quality, and that the profit or fee objective should reflect the extent and nature of the contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct material (purchased parts and other material).* (A) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required material. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for

example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design.

(B) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and to select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition.

(C) Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation.

(D) If intracompany transfers are accepted at price, in accordance with FAR 31.205-26(e), they should be excluded from the profit or fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(E) Normally, the lowest weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor in relation to the total cost of the material.

(ii) *Professional/Technical Services.* Analysis of the professional/technical services should include evaluation of the comparative quality and level of the talents and experience to be employed. In evaluating professional/technical services for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed, in contrast to journeyman effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance, and the corresponding need for professional/technical supervision and coordination, should also be evaluated.

(iii) *Overhead and general and administrative expenses.*

(A) Where practicable, analysis of these overhead items of cost should include the evaluation of the individual elements of these expenses, and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools, and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration as if they were direct labor. The other elements of

indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead expenses within the classification of professional/technical overhead, and general and administrative expenses. A contractor's accounting system which only reflects one overhead rate on all direct labor need not be modified to correspond with all of the above classifications. Where practicable, the contracting officer's evaluation of such an overhead rate should break out the applicable sections of the composite rate which could be classified as professional/technical overhead and general and administrative expenses, and follow the appropriate evaluation technique.

(C) The contracting officer need not make a separate profit evaluation of overhead expenses in connection with each acquisition for substantially the same product with the same contractor. Once an analysis of the profit weight to be assigned the overhead pool has been made, the weight assigned may be used for future acquisitions with the same contractor, until there is a change in the cost composition of the overhead pool or in the contract circumstances.

(iv) *Subcontractors.*

(A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the contractor is using subcontractors to perform services which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(B) In accordance with EPAAR 1515.902(d), the contracting officer may not consider subcontractor profit/fee as part of the basis for determining the contractors profit/fee.

(v) *Other direct costs.* Items of costs, such as travel and subsistence, should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest

extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of the degree of cost responsibility the contractor assumes, the reliability of the cost estimates in relation to the task assumed, and the chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a low rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percent-age ranges
Cost-plus-fixed-fee .....	0 to 1
Prospective price determination ...	4 to 5
Firm-fixed-price .....	4 to 6

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

Dated: May 9, 1997.

**Diane M. Balderson,**

*Acting Director, Office of Acquisition Management.*

[FR Doc. 97-13207 Filed 5-20-97; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Parts 192 and 195**

[Docket No. PS-94; Notice 7]

RIN 2137-AB38

**Qualification of Pipeline Personnel**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This announces the second meeting of RSPA's Negotiated Rulemaking Committee. The Committee is in the process of developing a proposed rule on qualification of those performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid and carbon dioxide pipeline operators, representatives of state and federal governments, labor organizations, and other interested parties.

**DATES:** The next Committee meeting will be held from 9 a.m. to 5 p.m. on May 21-22, 1997.

**ADDRESSES:** The meeting will be held in Room 10234-35 at the U.S. Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Eben M. Wyman, (202) 366-0918, regarding the subject matter of this notice; or the Dockets Unit, Room 8421, 400 7th Street, SW., Washington, DC, telephone (202) 366-4453, for copies of this document or other material in the docket.

**SUPPLEMENTARY INFORMATION:** At the initial meeting of the Committee, considerable explanation and training in the Negotiated Rulemaking process was provided by FMCS. The Committee also addressed many procedural issues, such

as ground rules for Committee discussion and addressing comments from the audience, development of the new notice of proposed rulemaking, the procedure for keeping a record or "minutes" of the meetings), and a schedule for distribution of minutes for review and concurrence prior to placing them in the public docket.

**Members of the RSPA Negotiated Rulemaking Committee**

1. American Gas Association.
2. American Petroleum Institute.
3. Interstate Natural Gas Association of America.
4. American Public Gas Association.
5. National Propane Gas Association.
6. Association of Texas Intrastate Natural Gas Pipelines.
7. Midwest Gas Association.
8. National Association of Corrosion Engineers.
9. National Association of Pipeline Safety Representatives.
10. National Association of Regulatory Utility Commissioners.
11. National Association of Fire Marshals.
12. International Union of Operating Engineers.
13. International Brotherhood of Electrical Workers.
14. Office of Pipeline Safety.

**Conduct of Meeting**

The meeting will be held over a two-day period, and may conclude early on the second day depending on the progress of the Committee. These meetings are open to the public, and a time for brief comments from the audience will be on each meeting's agenda.

Issued in Washington, DC, on May 15, 1997.

**Cesar De Leon,**

*Deputy Associate Administrator for Pipeline Safety.*

[FR Doc. 97-13260 Filed 5-20-97; 8:45 am]

BILLING CODE 4910-06-P