

“non-commercial” before the word “contracts”.

752.7015 [Amended]

72. Section 752.7015 is amended by revising the introductory paragraph, the clause heading, paragraph (a)(2), and paragraph (a)(4) of the clause to read as follows:

752.7015 Use of pouch facilities.

For use in all USAID non-commercial contracts exceeding the simplified acquisition threshold and involving performance overseas.

Use of Pouch Facilities (April 1996)

(a) * * *

(2) U.S. citizen employees of U.S. contractors are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see paragraph (a)(3) of this clause).

* * * * *

(4) Official mail as authorized by paragraph (a)(1) of this clause should be addressed as follows: Individual or Organization name, followed by the symbol “C”, city Name of Post, U.S. Agency for International Development, Washington, DC 20523-0001.

* * * * *

752.7017 [Removed]

73. Section 752.7017 is removed and reserved.

752.7027 [Amended]

74. Section 752.7027 is amended by adding “services” before the word “contracts” in the first sentence of the introductory paragraph and by revising “or” to read “of” in the heading of paragraph (c) of the clause.

752.7029 [Amended]

75. Section 752.7029 is amended by adding “non-commercial” before the word “contracts” in the introductory paragraph.

752.7033 [Amended]

76. Section 752.7033 is amended by revising “, and assigned Control No. 0412-0356” in the second sentence of paragraph (b) to read “(see 701.105(a))”, and by revising the clause heading and paragraph (a) to read as follows:

752.7033 Physical Fitness.

* * * * *

Physical Fitness (May 1997)

* * * * *

(a) *Assignments of less than 60 days in the Cooperating Country.* The contractor shall require employees being assigned to the Cooperating Country for less than 60 days to be examined by a licensed doctor of medicine. The contractor shall require the doctor to provide to the contractor a written statement that in his/her medical opinion, the employee is physically qualified to engage in the type of activity for which he/

she is employed and the employee is physically able to reside in the country to which he/she is assigned. Under a cost reimbursement contract, if the contractor has no written statement of medical opinion on file prior to the departure for the Cooperating Country of any employee and such employee is unable to perform the type of activity for which he/she is employed or cannot complete his/her tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract), the contractor shall be responsible for returning the disabled employee to his/her point of hire and providing a replacement at no additional cost to the Government. In addition, in the case of a cost reimbursement contract, the contractor shall not be entitled to reimbursement for any additional costs attributable to delays or other circumstances caused by the employee's inability to complete his/her tour of duty.

* * * * *

PART 753—FORMS

753.107 [Amended]

77. Section 753.107 is amended by revising “M/AS/PP/PP” to read “M/AS/ISS”.

78. Chapter 7 is amended by removing Appendices A, C, G, and H and reserving each.

Dated: May 13, 1997.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 97-18603 Filed 7-28-97; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 216, 232, 239, and 252

[DFARS Case 95-D708]

Defense Federal Acquisition Regulations Supplement; Truth in Negotiations and Related Changes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to amendments to the Federal Acquisition Regulation (FAR) pertaining to cost or pricing data requirements.

EFFECTIVE DATE: July 29, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-1031.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on October 23, 1995 (60 FR 54326). The rule proposed amendments to the DFARS to conform to FAR amendments that implemented requirements of the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103-355) pertaining to the submission of cost or pricing data by offerors and contractors. The rule also proposed to remove DFARS language pertaining to work measurement systems, as Section 2201(b) of FASA repealed 10 U.S.C. 2406, the primary statute covering work measurement systems.

Additional changes in the final rule include—

- Removal of the proposed language at DFARS 215.804-1(b)(1)(B)(3) to conform to FAR standards for adequate price competition.
- Amendments to DFARS 216.203-4-70 and the clauses at 252.216-7000 and 252.216-7001 to remove obsolete FAR references.
- Amendments to DFARS Part 239 and removal of the clauses at 252.239-7009 and 252.239-7010 to eliminate special cost or pricing data and audit requirements for telecommunications services.
- Retention of the clause at DFARS 252.215-7000, as the clause is considered to be a useful supplementation of the clauses at FAR 52.215-23, 52.215-24, and 52.215-25.

Public comments were received from four respondents. All comments were considered in the development of the final rule.

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 primarily consists of conforming DFARS amendments to reflect existing FAR requirements for submission of cost or pricing data, and because most prime contracts, as well as subcontracts, with small businesses do not require the submission of cost or pricing data.

C. Paperwork Reduction Act

This rule does not add any new information collection requirements that require approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* However, it is estimated that elimination of the clause at 252.239-7009 will reduce annual paperwork burden requirements by

4,400 hours (previously approved under OMB Clearance 0704-0187).

List of Subjects in 48 CFR Parts 204, 215, 216, 232, 239, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition
Regulations Council.

Therefore, 48 CFR Parts 204, 215, 216, 232, 239, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 215, 216, 232, 239, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

204.805 [Amended]

2. Section 204.805 is amended in the first sentence of paragraph (5) by removing the words "certification of".

PART 215—CONTRACTING BY NEGOTIATION

215.801 [Removed]

3. Section 215.801 is removed.
4. Sections 215.804 and 215.804-1 are revised to read as follows:

215.804 Cost or pricing data and information other than cost or pricing data.

215.804-1 Prohibition on obtaining cost or pricing data.

(b) *Standards for exceptions from cost or pricing data requirements.* (1) *Adequate price competition.* (A) An example of a price "based on" adequate price competition is exercise of a priced option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable in accordance with FAR 17.207(d);

(B) Dual or multiple source programs.
(1) In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(2) Adequate price competition normally exists when—
(i) Prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors that are individually capable of producing the full quantity; and
(ii) The reasonableness of all prices awarded is clearly established on the

basis of price analysis (see FAR 15.805-2).

(4) *Exceptional cases.*

(A) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(B) The DoD has waived certain cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations.

215.804-3 [Removed]

5. Section 215.804-3 is removed.

215.804-6 Amended]

6. Section 215.804-6 is amended by redesignating paragraphs (b)(2)(A) and (B) as paragraphs (b)(1)(A) and (B), respectively.

7. Section 215.05-5 is amended by revising paragraph (a)(1)(A) to read as follows:

215.805-5 Field pricing support.

(a)(1)(A) Contracting officers shall request field pricing reports for—

(1) Fixed-price proposals exceeding the cost or pricing data threshold at FAR 15.804-2(a)(1);

(2) Cost-type proposals exceeding the cost or pricing data threshold at FAR 15.804-2(a) (1) from offerors with significant estimating system deficiencies (see 215.811-70(a)(3) and (c)(2)(i); or

8. Section 215.805-70 is amended by revising paragraph (b) to read as follows:

215.805-70 Cost realism analysis.

(b) The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is already available from Government sources, the contracting officer will need to ask the offerors for it.

(1) Request only necessary data; and
(2) Do not request submission of cost or pricing data.

9. Section 215.811-70 is amended by revising paragraphs (b)(2), (g)(3)(ii), and (h) to read as follows:

215.811-70 Disclosure, maintenance, and review requirements.

* * * * *

(b) * * *

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling \$50 million or more for which cost or pricing data were required; or

(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling \$10 million or more (but less than \$50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

* * * * *

(g) * * *

(3) * * *

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system;

* * * * *

(h) *Contract clause.* Use the clause at 252.215-7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of cost or pricing data.

215.872 [Removed and Reserved]

10. Section 215.872 is removed and reserved.

215.872-1 through 215.872-4 [Removed]

11. Sections 215.872-1 through 215.872-4 are removed.

PART 216—TYPES OF CONTRACTS

216.203-4 [Amended]

12. Section 216.203-4 is amended in the first sentence of paragraph (d)(xvi) by revising the reference "15.804-3" to read "15.804-1".

13. Section 216.203-4-70 is amended by revising paragraph (a); by removing paragraphs (b)(4) and (b)(6), and by redesignating paragraphs (b)(5) and (b)(7) as paragraphs (b)(4) and (b)(5), respectively. The revised text reads as follows:

216.203-4-70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.*

(1) The price adjustment clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(2) The 10 percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

* * * * *

PART 232—CONTRACT FINANCING

14. Section 232.502-1-71 is amended by revising paragraph (b)(3) to read as follows:

232.502-1-71 Customary flexible progress payments.

* * * * *

(b) * * *

(3) Contractors who submit cost or pricing data, as defined in FAR 15.801, for negotiated fixed-price contracts in excess of \$1 million may request flexible progress payments.

* * * * *

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

15. Section 239.7406 is revised to read as follows:

239.7406 Cost or pricing data and information other than cost or pricing data.

(a) Common carriers are not required to submit cost or pricing data before award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers shall obtain sufficient information to determine that the prices are reasonable. For example, cost or pricing data, if required in accordance with FAR 15.804-2, or information other than cost or pricing data, if required in accordance with FAR 15.804-5, may be necessary to support the reasonableness of—

(1) Nontariffed services;

(2) Special rates and charges not included in a tariff, whether filed or to be filed;

(3) Special assembly rates and charges;

(4) Special construction and equipment charges;

(5) Contingent liabilities that are fixed at the outset of the service;

(6) Proposed cancellation and termination charges under the clause at 252.239-7007, Cancellation or Termination of Orders—Common Carriers, and reuse arrangements under the clause at 252.239-7008, Reuse Arrangements;

(7) Rates contained in voluntary tariffs filed by nondominant common carriers; or

(8) A tariff, whether filed or to be filed, for new services installed or developed primarily for Government use.

239.7411 [Amended]

16. Section 239.7411 is amended by removing paragraphs (a)(8) and (a)(9); and in paragraph (a)(7) by removing the semicolon and inserting a period in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215-7000 [Amended]

17. Section 252.215-7000 is amended in the introductory text by revising the reference “215.804-8(1)” to read “215.804-8”.

252.215-7002 [Amended]

18. Section 252.215-7002 is amended by revising the clause date to read “(JUL 1997)” and in paragraphs (c)(1) and (c)(2)(i) by removing the word “certified”.

19. Section 252.216-7000 is amended by revising the clause date and paragraph (a) to read as follows:

252.216-7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

* * * * *

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (Jul 1997)

(a) *Definitions.*

As used in this clause—

Established price means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

Unit price excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

* * * * *

20. Section 252.216-7001 is amended by revising the clause date; and in

paragraph (a) by revising the definition of “Established price” to read as follows:

252.216-7001 Economic Price Adjustment—Nonstandard Steel Items.

* * * * *

Economic Price Adjustment—Nonstandard Steel Items (Jul 1997)

(a) * * *

Established price is—

(1) A price which is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

* * * * *

§ 252.239-7006 [Amended]

21. Section 252.239-7006 is amended by revising the clause date to read “(Jul 1997)” and in paragraph (a)(2) by inserting a comma after the words “Before filing.”

§§ 252.239-7009 and 252.239-7010 [Removed and Reserved]

22. Sections 252.239-7009 and 252.239-7010 are removed and reserved.

23. Section 252.243-7000 is amended by revising the clause date and paragraph (c) to read as follows:

§ 252.243-7000 Engineering Change Proposals.

* * * * *

Engineering Change Proposals (Jul 1997)

* * * * *

(c) When the price** of the engineering change is \$500,000 or more, the Contractor shall submit—

(1) A completed SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required); and

(2) At the time of agreement on price*, or on another date agreed upon between the parties, a signed Certificate of Current Cost or Pricing Data.

* * * * *

[FR Doc. 97-19907 Filed 7-28-97; 8:45 am]

BILLING CODE 5000-04-M