Act of 1994 (Pub. L. 103–355) and Office of Federal Procurement Policy Letter 92–5, Past Performance Information. Subsequent to publication of the proposed rule, numerous policy issues relating to the collection and appropriate use of past performance information were identified. The DoD Past Performance Integrated Process Action Team (IPT) is currently determining the appropriate resolution to these issues. Therefore, DFARS Case 95–D715 is closed and the proposed rule is withdrawn. A new DFARS case will be opened after the DoD Past Performance IPT develops its recommendations.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

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DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 96–D303]

Defense Federal Acquisition Regulation Supplement; Cost Reimbursement Rules for Indirect Costs—Private Sector

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide additional guidance on defense capability preservation agreements.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 20, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D303 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) permits DoD to enter into a defense capability preservation agreement with a defense contractor where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its defense contracts. To implement Section 808, an interim rule was published in the **Federal Register** on May 13, 1996 (61 FR 21973), that added DFARS subsection 231.205–71, Defense capability preservation agreements.

This proposed rule revises subsection 231.205–71 to add additional guidance for evaluating requests for defense capability preservation agreements, and to add cost reimbursement rules to apply if DoD enters into such an agreement with a contractor. Specifically, this rule differs from the interim rule by (1) redesignating paragraph (b) as paragraph (e); (2) adding paragraphs (b) Definition, (c) Purpose and guidelines, and (d) Cost-reimbursement rules; and (3) making editorial changes. Due to the differences between the two rules, a proposed rule is being promulgated to obtain further public comment prior to finalizing the rule.

Public comments on the interim rule were received from three sources. All comments were considered in the development of this proposed rule.

B. Regulatory Flexibility Act

This proposed rule is not expected to 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D303 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the proposed rule contains information collection requirements. The Office of Management and Budget (OMB) has approved an information collection concerning defense capability preservation agreements through July 31, 1999, under OMB Control Number 0704–0387, based on the requirements in the interim rule. However, the actual number of respondents requesting defense capability preservation agreements since publication of the interim rule on May 13, 1996, is lower than previously estimated. Accordingly, the estimate of the annual number of respondents is decreased from 50 to 10, and the estimated annual information collection burden is decreased from 4000 to 800 hours.

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Part 231 be amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–71 is revised to read as follows:

231.205–71 Defense capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), DoD may enter into a defense capability preservation agreement with a contractor. As authorized by Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), such an agreement would permit the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on its defense contracts.

(b) *Definition.* ''Incremental indirect cost,'' as used in this subsection, means an additional indirect cost that results from performing private sector work described in a defense capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a defense capability preservation agreement is to broaden and strengthen the industrial base by providing an incentive for a company to obtain new private sector work, thereby reducing DoD's cost of doing business.

DoD will use the following guidelines to evaluate requests for defense capability preservation agreements:

(1) the Under Secretary of Defense for Acquisition and Technology must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b).

The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a company is able to obtain.

(2) An agreement generally will be considered only for a company or business segment with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to DoD, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by DoD.

(d) *Cost-reimbursement rules.* If DoD enters into a defense capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) DoD may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, DoD may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, DoD will consider factors such as the impact of pre-existing firm-fixed-price DoD contracts on the amount of costs that would be reimbursed by DoD, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a defense capability preservation agreement, together with appropriate justification, through the Deputy Under Secretary of Defense for Industrial Affairs and Installations, to the Under Secretary of Defense for Acquisition and Technology, who has exclusive approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

[FR Doc. 97–21892 Filed 8–19–97; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 97–D012]

Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Reviews

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise guidance pertaining to the conduct of Contractor/Insurance Pension Reviews (CIPRs).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 20, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R. G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 97–D012 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Subpart 242.73 to more clearly define requirements for conducting CIPRs; to eliminate the requirement for conducting a CIPR every 2 years; and to require the performance of special CIPRs under certain circumstances.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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 applies only to contractors whose annual qualifying sales to the Government exceed $40 million, and no small entities are known to meet this criteria. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D012 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule imposes no information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 242 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 242 continues to read as follows:

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

PART 242—CONTRACT ADMINISTRATION

2. Sections 242.7301 through 242.2703 are revised to read as follows:

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of