

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")
 Issued: November 3, 1997.
Michael J. Armstrong,
Associate Director for Mitigation.
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Federal Communications Commission.
William F. Caton,
Acting Secretary.
 [FR Doc. 97-29661 Filed 11-10-97; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[ET Docket No. 96-2; FCC 97-347]

Arecibo Coordination Zone

AGENCY: Federal Communications Commission.
ACTION: Final rule; correction.

SUMMARY: This document contains a correction to one of the final rules adopted in "Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico", which was published Monday, October 27, 1997 (62 FR 55525).

EFFECTIVE DATE: December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION:

Background

This document corrects Section 101.123(d) of the Commission's rules, as modified in "Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico," ET Docket 96-2, FCC 97-347 (released October 15, 1997), 62 FR 55525 (October 27, 1997). This rule, which deals with Quiet Zones and Arecibo Coordination Zone was published with a clerical error.

Need for Correction

As published, this final rule contains an error that may be misleading and is in need of clarification.

Correction of Publications

Accordingly, the publication on October 27, 1997, of final rules in ET Docket No. 96-2, which was the subject of FR Doc. 97-28296, is corrected as follows:

§ 101.123 [Corrected]

On page 55536, in the third column, within the regulatory instruction for § 101.123, paragraph (d) is correctly designated as paragraph 101.123(e).

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL-5919-4]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revises the EPA Acquisition Regulation (EPAAR) on calculation of profit or fee. Two unrelated administrative corrections are also being made.

EFFECTIVE DATE: November 12, 1997.

ADDRESSES: Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, Telephone: (202) 564-4369.

SUPPLEMENTARY INFORMATION:

I. Background Information

The proposed rule was published in the **Federal Register** (62 FR 27712-27715) on May 21, 1997, providing for a 60-day comment period.

Interested parties were afforded the opportunity to participate in the making of this rule. The following is a summary of each comment and the Agency disposition of those comments.

1. *Comment:* EPA should make it clear that Subpart 1515.970-2(b)(iv) cannot be interpreted to allow only one profit or fee determination for both the general contractor and subcontractor levels of an acquisition.

Response: Privity of contract is an established principle in Government contracting. The Government's contract is with the prime (general) contractor. Duties such as direction and payment of the subcontractors are solely the responsibility of the prime contractor. Therefore, profit or fee determinations are solely based on the prime contractor's effort.

2. *Comment:* We are concerned about the soundness of "structured approach" policy. We believe the structured approach prevents the Government from receiving best value by adding unnecessary expense to the negotiation process. Further, the structure approach distorts market value in competitive

procurements by substituting private industry competitive determinations of cost and profit with Government notions of what the market "should be."

Response: As stated in EPAAR 1515.902(a)(3), the structured approach is a basis for negotiations, not a final determination. Also, EPAAR 1515.903 is being added by this rule to allow exemption of cost realism evaluations from required use of a structured approach. Cost realism is a factor in best value procurements. Furthermore, EPAAR 1515.902(b) specifies numerous other types of contracts and circumstances where methods other than the structured approach set forth in EPAAR 1515.970 may be used. For instance, the structured approach is not required for construction contracts (EPAAR 1515.902(b)(vi)).

3. *Comment:* We are concerned that Subpart 1515.970-2(b)(2)(iii)(C) of the proposed rule could be misinterpreted by contracting officers. Each construction acquisition, regardless of the contract type or contractor experience, is a unique project which can have significant distinguishing characteristics. Profit or fee weighted guidelines should therefore be considered anew for each acquisition.

Response: We agree that the cited provision may be subject to misinterpretation. It is also unnecessary, since it is not a mandatory requirement and the contracting officer has a certain amount of flexibility in making weighted guideline determinations. The provision at 1515.970-2(b)(2)(iii)(C) will be deleted.

4. *Comment:* EPA should emphasize to contracting officers that weighted guidelines are prenegotiation benchmarks, not unchangeable standards.

Response: See EPAAR 1515.902(a)(3) and the Agency policy at EPAAR 1515.970-1. Both citations provide for a structured approach as a basis for negotiations, rather than as a final determination.

5. *Comment:* EPA should review and update its statement in EPAAR 1515.970-2(a)(3), relating to facilities capital cost of money.

Response: Based on a review of approaches taken by other Agencies on this matter, EPA will reassess EPAAR 1515.970-2, for possible revision in a future action.

II. 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.