

prerecorded programming completed well in advance of its distribution on television.

(xi) For better coordination for ensuring high quality captions and for addressing problems as they arise, understand the roles and responsibilities of other stakeholders in the closed-captioning process, including video program distributors, video programmers, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

Small Business Programs

CFR Correction

■ In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201 to 299), revised as of October 1, 2013, on page 136, before subpart 219.12, subpart 219.11 is reinstated to read as follows:

Subpart 219.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

219.1101 General.

The determination to use or suspend the price evaluation adjustment for DoD acquisitions can be found at <http://www.acq.osd.mil/dpap/dars/classdev/index.htm>.

[72 FR 20763, Apr. 26, 2007]

219.1102 Applicability.

(b) The price evaluation adjustment also shall not be used in acquisitions that are for commissary or exchange resale.

(c) Also, do not use the price evaluation adjustment in acquisitions that use tiered evaluation of offers, until a tier is reached that considers offers from other than small business concerns.

[63 FR 41974, Aug. 6, 1998, as amended at 71 FR 53043, Sept. 8, 2006]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

RIN 0750-AH54

Defense Federal Acquisition Regulation Supplement; Performance-Based Payments (DFARS Case 2011-D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide detailed guidance and instructions on the use of the performance-based payments analysis tool.

DATES: Effective March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571-372-6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 77 FR 4638 on January 30, 2012, to provide requirements for the use of the performance-based payments (PBP) analysis tool. The PBP analysis tool is a cash-flow model for evaluating alternative financing arrangements, and is required to be used by all contracting officers contemplating the use of performance-based payments on new fixed-price type contract awards.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided as follows:

A. Adequate Accounting System

Comment: One respondent requested clarification on whether the proposed rule requires an accounting system deemed adequate by the Government.

DoD Response: FAR 32.1007(c) requires the contracting officer to determine the adequacy of controls established by the contractor for the administration of performance-based payments. Since the contractor will be required to report total cost incurred to date based on its existing accounting system, the contracting officer must consider the adequacy of the contractor's accounting system for providing reliable cost data. DFARS 232.1003-70, Criteria for use, is added

to require contracting officers to consider the adequacy of an offeror's or contractor's accounting system prior to agreeing to use performance-based payments.

B. Administratively Burdensome and Costly

Comment: One respondent stated that the proposed rule is administratively burdensome, and that implementation will surpass the one hour average burden per response.

DoD Response: Performance-based payments will be paid for completed events, but not more frequently than monthly. Each request for a PBP will require the contractor to provide two dollar values: Cumulative value of PBP events completed to date and total cost incurred to date. The rule is, therefore, not administratively burdensome since it requires the contractor to provide information that should be readily available in the contractor's accounting system in the ordinary course of business. Accordingly, DoD estimates, on average, it will not take more than one hour per response.

Comment: One respondent requested clarification regarding in what manner contractors will be required to verify, or otherwise state, total costs incurred.

DoD Response: Each request for a PBP will require the contractor to provide two dollar values: Cumulative value of PBPs completed to date and total cost incurred to date. For DoD verification purposes, the final rule includes the requirement for the contractor to provide access, upon request of the contracting officer, to the contractor's books and records, as necessary, for the administration of the clause.

Comment: One respondent expressed concern that since the proposed rule forces contractors to disclose extensive cost information and report incurred costs per milestone, the costs associated with this reporting obligation will increase the cost to the Government.

DoD Response: The cost information to be provided by the contractor takes two forms: A projected expenditure profile of total cost per month which is required once when PBPs are initially proposed (i.e., as part of the contractor's proposed performance-based payments schedule that includes all performance-based payments events, completion criteria, event values, etc.) and cumulative value of PBPs completed to date and total cost incurred to date, which are required during the performance of the contract. The expenditure profile is a key element in determining the expected financing needs over time and is needed by both parties in order to establish appropriate