

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 42 and 52**

[FAR Case 95-018]

RIN 9000-AG88

**Federal Acquisition Regulation; Final  
Indirect Cost Rates**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to revise the procedures relating to final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Comments should be submitted on or before July 29, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 95-018 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 95-018.

**SUPPLEMENTARY INFORMATION:****A. Background**

This proposed rule amends FAR Subpart 42.7 to permit, with certain restrictions, increased interim payments to contractors under certain circumstances. FAR 42.704 is amended to permit, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals. The clauses at FAR 52.216-7 and 52.216-13 are revised to establish a timeframe for contractor submission of final vouchers. The clauses at 52.216-8 through 52.216-10 are revised to require release of 75 percent of all fee withholds

under physically completed cost-type contracts, and to permit release of 90 percent of all withholds in certain circumstances.

**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 business are awarded on the basis of firm-fixed-price, and settlement of final indirect cost rates is, therefore, not an issue. Furthermore, any impact of this rule would be to reduce cost and administrative burdens on both contractors and Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 95-018), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**List of Subjects in 48 CFR Parts 42 and 52**

Government procurement.

Dated: May 21, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

**PART 42—CONTRACTOR  
ADMINISTRATION**

2. Section 42.704 is amended by adding paragraph (e) to read as follows:

**42.704 Billing rates.**

\* \* \* \* \*

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with 42.705-1(b) or 42.705-2(b), the contractor may bill the proposed indirect cost rates, as

approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer (42.705-1(b)) or the cognizant auditor (42.705-2(b)).

3. Section 42.705 is revised to read as follows:

**42.705 Final indirect cost rates.**

(a) Final indirect cost rates shall be established on the basis of—

(1) Contracting officer determination procedure (see 42.705-1) or

(2) Auditor determination procedure (see 42.705-2).

(b) Within 120 days after settlement of the final indirect cost rates, the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.

**PART 52—SOLICITATION PROVISIONS  
AND CONTRACT CLAUSES**

4. Section 52.216-7 is amended by revising the date of the clause; redesignating paragraph (d)(4) as (d)(5) and adding a new paragraph (d)(4); and revising paragraph (h)(1) to read as follows:

**52.216-7 Allowable Cost and Payment.**

\* \* \* \* \*

Allowable Cost and Payment (Date)

(d) \* \* \*

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

\* \* \* \* \*

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

\* \* \* \* \*

5. Section 52.216-8 is amended by revising the date and paragraph (b) of the clause to read as follows:

**52.216-8 Fixed fee.**

\* \* \* \* \*

Fixed-Fee (Date)

\* \* \* \* \*

(b) The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions,

including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

6. Section 52.216-9 is amended by revising the date and paragraph (c) of the clause to read as follows:

**52.216-9 Fixed-Fee—Construction.**

\* \* \* \* \*

Fixed-Fee—Construction (Date)

\* \* \* \* \*

(c) The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission

and settlement of final indirect cost rate proposals.

7. Section 52.216-10 is amended by revising the date of the clause; and adding two sentences to the end of paragraph (c); to read as follows:

**52.216-10 Incentive Fee.**

\* \* \* \* \*

Incentive Fee (Date)

\* \* \* \* \*

(c) \* \* \* The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

\* \* \* \* \*

(End of clause)

8. Section 52.216-13 is amended by revising the date of the clause; redesignating paragraph (c)(4) as (c)(5)

and adding a new paragraph (c)(4); and by revising the date and paragraph (h) of Alternate I to read as follows:

**52.216-13 Allowable Cost and Payment—Facilities.**

\* \* \* \* \*

Allowable Cost and Payment—Facilities (Date)

\* \* \* \* \*

(c) \* \* \*

(4) Within 120 days after settlement of the final indirect cost rate covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

\* \* \* \* \*

(End of clause)

Alternate I (Date) \* \* \*

\* \* \* \* \*

(h) *Final payment.* Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

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