

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[IL162-1b; FRL-5926-7]

**Approval and Promulgation of State Implementation Plan; Illinois****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a September 8, 1997, State Implementation Plan (SIP) revision request submitted by the State of Illinois to tighten Volatile Organic Material regulations for cold cleaning degreasing operations in the Chicago and Metro-East ozone nonattainment areas. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, the direct final rule will be withdrawn and all written public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments on this proposed rule must be received on or before December 26, 1997.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6082.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct

final rule published in the rules section of this **Federal Register**.

Dated: November 7, 1997.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 97-31140 Filed 11-25-97; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF DEFENSE****48 CFR Parts 214 and 215**

[DFARS Case 97-D011]

**Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments****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 specify that, when a contract contains multiple accounting classification reference numbers and a clause for progress payments, the contracting officer shall provide instructions to enable the paying office to distribute the progress payments in proportions that reasonably reflect the performance of work under the contract. This policy was originally scheduled for implementation on October 1, 1997; implementation has been delayed pending a more complete review of the resource implications of the Department's planned manner of distributing progress payments. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. The Administrator of the Office of Information and Regulatory Affairs has determined that this is a major rule under 5 U.S.C. 804.

**DATES:** Comments on the proposed rule and the associated information collection requirements should be submitted in writing to the addresses specified below on or before January 26, 1998, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule 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. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 97-D011 in all correspondence related to this issue. E-mail

correspondence should cite DFARS Case 97-D011 in the subject line.

Interested parties should submit written comments on the associated information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Peter N. Weiss, Desk Officer, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations Council at the address specified above.

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

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

A proposed DFARS rule was published in the **Federal Register** on June 5, 1997 (62 FR 30829). The rule required a contracting officer to provide payment instructions to enable the paying office to distribute financing payments to the contract line item number (CLIN)/subline item number (SLIN) that reflects the work performed during the period covered by the contractor's financing request. Public comments were received from seven sources. All comments were considered.

This DFARS rule differs significantly from the proposed DFARS rule published in the **Federal Register** on June 5, 1997. Therefore, this second proposed rule is being published to obtain further public comments, prior to promulgation of a final rule. One of the main differences is that this revised rule raises the level to which actual funds usage must be identified. The previously published proposed rule required contracting officers to provide distribution instructions at the contract line item or subline item level. DoD has concluded that instructions by CLIN or SLIN are not necessary, in particular, in cases where several CLINs/SLINs are funded with the same accounting classification reference number (ACRN). Consequently, this DFARS rule requires distribution instructions by ACRN, rather than by CLIN/SLIN. Each appropriation or subdivision thereof is reflected in the contract by a distinct ACRN.

A second difference between the two proposed rules is that this revised rule no longer requires the contracting officer to use one of four alternative approaches for developing the payment instructions. However, for research and development contracts, the rule does retain the approach of using oldest funds first, absent conflicting information.

This proposed rule also differs from the June 5, 1997, proposed rule by

clarifying that the rule applies to the progress payments type of financing; and that contractors, when asked by contracting officers to provide information, need to provide best estimates of funding distribution by ACRN, based on existing accounting systems.

### 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 meeting of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold, and, therefore, do not use the progress payments method of financing. 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 subparts will also be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 97-D011), 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. A new information collection requirement has been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3507(d)(1)(A).

1. *Title, Associated Form, and OMB Number:* A new information collection requirement, "Distribution of Contract Financing Payments," has been submitted to OMB for review. An OMB Number has not yet been assigned.

2. *Needs and Uses:* 31 U.S.C. 1301(a) provides that "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." To facilitate compliance, the Under Secretary of Defense (Comptroller) (USD(C)) has directed paying offices to begin charging progress payments to the obligations that correspond to the deliverables for which costs were incurred during the period covered by the progress payment request. In order to implement this direction, contracting officers must provide progress payment distribution instructions to paying offices. One possible source of information for devising distribution instructions is the contractor, by means of a contract requirement for estimates of distributions by ACRN.

*Affected Public:* Businesses or other for profit.

*Annual Burden Hours:* 1,440,000.

*Number of Respondents:* 2,000.

*Average Burden Per Response:* 60 hours.

*Frequency:* On occasion.

#### 3. Supplementary Information:

Summary of Information Collection. The collection of information from contractors will be required only to the extent deemed necessary by contracting officers if they are unable to devise payment distribution instructions using other available information. Compliance with 31 U.S.C. 1301(a) does not require submission of information by contractors. However, in order to better meet the requirements of the law, contracting officers may need to obtain certain information from contractors in the form of contractor estimates of payment distribution by ACRN, based on actual or anticipated contract performance. When obtained from contractors, the frequency of submittal of distribution information will be determined by the frequency of the contractor's submission of progress payment requests, but may not be more frequent than monthly.

4. *Comments:* Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

### List of Subjects in 48 CFR Parts 214 and 215

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 214 and 215 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 214 and 215 continues to read as follows:

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

### PART 214—SEALED BIDDING

2. Sections 214.201, 214.201-2, and 214.201-9 are added to read as follows:

### 214.201 Preparation of invitations for bids.

#### 214.201-2 Part I—the Schedule.

(g) *Section G, Contract administration data.*

(i) When a contract contains multiple accounting classification reference numbers (ACRNs) (see 204.7101) and includes a clause for progress payments, the contracting officer shall provide instructions to enable the paying office to distribute progress payments to the ACRNs in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall represent a best estimate based on available information, and shall be updated as necessary.

(ii) The contracting officer may provide payment distribution instructions to the paying office with each progress payment request, or as an extended schedule for application to multiple requests on one contract. If provided as an extended schedule, the instructions must be furnished before the first progress payment is to be paid.

(iii) For incrementally funded research and development (R&D) contracts, or contract line items funded with R&D appropriations, the contracting officer may assume contractor work will be performed for the benefit of ACRNs with the earliest fiscal year's funding (*i.e.*, using oldest funds first), unless there is information to the contrary available.

(iv) For non-R&D contracts, the contracting officer should provide distribution instructions using the best information available, including information based upon—

(A) Contract funds status reports provided under a contract requirement for contractor cost reporting;

(B) The contract delivery schedule; or

(C) A profile of anticipated contractor expenditures based on historical spending patterns, or other knowledge of contractor performance of similar efforts.

(v) If the type of information set forth in paragraph (g)(iv) of this subsection is not available, or the contracting officer is not able to develop distribution instructions based on available information, the contracting officer may develop a best estimate of the contractor's anticipated work progress based on a general knowledge of the contractor or industry practices.

Alternatively, the contracting officer may require the contractor to furnish distribution instructions in accordance with a contract requirement. However, if such a requirement is included in a contract, the contracting officer shall—

(A) Require the contractor to provide its best estimate of work performed by

ACRN, in accordance with the guidance provided in DFARS 214.201-2(g), and inform the contractor that this information is not considered to be an attachment to the Standard Form 1443,

Contractor's Request for Progress Payment.  
(B) Provide information to the contractor on total obligations by ACRN, including their relationship with each

contract line item/subline item, and maintain that information as required by contract changes. A matrix such as the following may be used for this purpose:

	AA	AB	AC
0001 .....	\$500	.....	.....
0002 .....	1,000	.....	.....
0003AA .....	.....	\$600	.....
0003AB .....	.....	800	.....
0004 .....	.....	.....	\$400
<b>Total</b> .....	<b>1,500</b>	<b>1,400</b>	<b>400</b>

(C) Not require the contractor to revise its accounting system to account for or accumulate costs by ACRN.

(vi) The overall limit on progress payments on a contract, established through application of the contract progress payment rate and, if applicable, a loss ratio, shall continue to govern the total amount of progress payments that may be paid on a contract. These limits should continue to be applied on a total contract basis. Progress payments will be liquidated at the ACRN level.

**214.201-9 Simplified contract format.**

(b) *Contract schedule.*

(8) See 214.210-2(g) for contracts that contain multiple accounting classification reference numbers and include a clause for progress payments.

**PART 215—CONTRACTING BY NEGOTIATION**

3. Section 215.406-2 is revised to read as follows:

**215.406-2 Part I—The Schedule.**

(g) *Section G, Contract administration data.*

(i) When a contract contains both fixed-price and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

(ii) Contracts with multiple accounting classification reference

numbers (ACRNs) and a clause for progress payments.

(A) When a contract contains multiple accounting classification reference numbers (ACRNs) (see 204.7101) and includes a clause for progress payments, the contracting officer shall provide instructions to enable the paying office to distribute progress payments to the ACRNs in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall represent a best estimate based on available information, and shall be updated as necessary.

(B) The contracting officer may provide payment distribution instructions to the paying office with each progress payment request, or as an extended schedule for application to multiple requests on one contract. If provided as an extended schedule, the instructions must be furnished before the first progress payment is to be paid.

(C) For incrementally funded research and development (R&D) contracts, or contract line items funded with R&D appropriations, the contracting officer may assume contractor work will be performed for the benefit of ACRNs with the earliest fiscal year's funding (i.e., using oldest fund first), unless there is information to the contrary available.

(D) For non-R&D contracts, the contracting officer should provide distribution instructions using the best information available, including information based upon—

(1) Contract funds status reports provided under a contract requirement for contractor cost reporting;

(2) The contract delivery schedule; or

(3) A profile of anticipated contractor expenditures based on historical spending patterns, or other knowledge of contractor performance of similar efforts.

(E) If the type of information set forth in paragraph (g)(ii)(D) of this subsection is not available, or the contracting officer is not able to develop distribution instructions based on available information, the contracting officer may develop a best estimate of the contractor's anticipated work progress based on a general knowledge of the contractor or industry practices. Alternatively, the contracting officer may require the contractor to furnish distribution instructions in accordance with a contract requirement. However, if such a requirement is included in a contract, the contracting officer shall—

(1) Require the contractor to provide its best estimate of work performed by ACRN, in accordance with the guidance provided in DFARS 215.406-2(g), and inform the contractor that this information is not considered to be an attachment to the Standard Form 1443, Contractor's Request for Progress Payment.

(2) Provide information to the contractor on total obligations by ACRN, including their relationship with each contract line item/subline item, and maintain that information as required by contract changes. A matrix such as the following may be used for this purposes:

	AA	AB	AC
0001 .....	\$500	.....	.....
0002 .....	1,000	.....	.....
0003AA .....	.....	\$600	.....
0003AB .....	.....	800	.....
0004 .....	.....	.....	\$400
<b>Total</b> .....	<b>1,500</b>	<b>1,400</b>	<b>400</b>

(3) Not require the contractor to revise its accounting system to account for or accumulate costs by ACRN.

(F) The overall limit on progress payments on a contract, established through application of the contract progress payment rate and, if applicable, a loss ratio, shall continue to govern the total amount of progress payments that may be paid on a contract. These limits should continue to be applied on a total contract basis. Progress payments will be liquidated at the ACRN level.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 215 and 252

[DFARS Case 97-D018]

#### Defense Federal Acquisition Regulation Supplement: Contracting by Negotiation; Part 215 Rewrite

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 procedures pertaining to contracting by negotiation. These amendments conform with amendments made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular 97-02, which was published in the **Federal Register** on September 30, 1997.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 26, 1998 to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, *Attn:* Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301-3062. Telefax number (703) 602-0350.

E-mail comments submitted over the Internet should be addressed to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil)

Please cite DFARS Case 97-D018 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97-D018 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule revises DFARS part 215 to align it with the reorganized format of FAR part 15 (FAR Case 95-

029, FAR part 15 Rewrite) that was published as a final rule in the **Federal Register** on September 30, 1997 (62 FR 51224). In addition to changes related to format, the following changes have been made:

- DFARS guidance on the four-step source selection process and the alternate source selection process have been removed, as the new guidance at FAR 15.101, best value continuum, clearly allows such source selection processes.

- DFARS requirements for obtaining approvals before requesting second or subsequent best and final offers have been removed in view of the new guidance on proposal revisions at FAR 15.307.

- DFARS guidance on cost realism analysis has been revised to reflect the new guidance on cost realism analysis at FAR 15.404-1(d).

- Thresholds for requesting field pricing assistance have been added at DFARS 215.404-2. Similar guidance was removed from the FAR, but is still considered to be appropriate for DoD activities.

- DFARS guidance on field pricing support has been revised to conform with the FAR revisions that eliminated standard content requirements for field pricing reports.

##### 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 primarily consists of conforming DFARS amendments to reflect existing FAR guidance on contracting by negotiation. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D018 in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 215 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 215 and 252 continues to read as follows:

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

#### PART 215—CONTRACTING BY NEGOTIATION

2. Part 215 is revised to read as follows:

#### PART 215—CONTRACTING BY NEGOTIATION

Sec.

215.000 Scope of part.

##### Subpart 215.2—Solicitation and Receipt of Proposals and Information

215.204-2 Part I—The Schedule.

##### Subpart 215.3—Source Selection

215.304 Evaluation factors and significant subfactors.

215.305 Proposal evaluation.

##### Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.

215.403-1 Prohibition on obtaining cost or pricing data.

215.403-1-70 Waivers and exemptions.

215.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

215.404 Proposal analysis.

215.404-1 Proposal analysis techniques.

215.404-2 Information to support proposal analysis.

215.404-3 Subcontract pricing considerations.

215.404-4 Profit.

215.404-70 DD Form 1547, Record of Weighted Guidelines Method Application.

215.404-71 Weighted guidelines method.

215.404-71-1 General.

215.404-71-2 Performance risk.

215.404-71-3 Contract type risk and working capital adjustment.

215.404-71-4 Facilities capital employed.

215.404-72 Modified weighted guidelines method for nonprofit organizations.

215.404-73 Alternative structured approaches.

215.404-74 Fee requirements for cost-plus-award-fee contracts.

215.404-75 Reporting profit and fee statistics.

215.406-1 Prenegotiation objectives.

215.406-3 Documenting the negotiation.

215.407-1 Defective cost or pricing data.

215.407-2 Make-or-buy programs.

215.407-3 Forward pricing rate agreements.

215.407-4 Should-cost review.

215.407-4 Estimating systems.