

2. Section 2.101 is amended in the definition of "Information technology" by revising paragraph (c) to read as follows:

#### 2.101 Definitions.

\* \* \* \* \*

*Information technology* \* \* \*

\* \* \* \* \*

(c) The term *information technology* does not include—

(1) Any equipment that is acquired by a contractor incidental to a contract; or

(2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 4, 42, and 52

[FAC 97-03; FAR Case 95-017; Item III]

RIN 9000-AG87

#### Federal Acquisition Regulation; Final Overhead Settlement

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to improve the process of final settlement of contractor overhead rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-03, FAR case 95-017.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by—

- Extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractors fiscal year;
- Permitting extensions to the 6-month time period for exceptional circumstances only; and
- Providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

A proposed rule was published in the **Federal Register** on July 29, 1996 (61 FR 39518). Fourteen sources submitted comments. All comments were considered in the development of the final rule.

##### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 are awarded on a competitive, fixed-price basis and do not require settlement of contractor indirect cost rates.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 4, 42, and 52

Government procurement.

Dated: December 1, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 4, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 42, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 4—ADMINISTRATIVE MATTERS

### 4.703 [Amended]

2. Section 4.703 is amended in paragraph (b)(3) by removing "90-day" each time it appears (twice).

## PART 42—CONTRACT ADMINISTRATION

3. Section 42.705-1 is amended by revising paragraph (b)(1) to read as follows:

#### 42.705-1 Contracting officer determination procedure.

\* \* \* \* \*

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address <http://www.dtic.mil/dcaa>;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767-1061;

(iii) Sending an E-Mail request to \*CMO@hql.dcaa.mil; or

(iv) Writing to: Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

\* \* \* \* \*

4. Section 42.705-2 is amended by revising paragraph (b)(1) to read as follows:

**42.705-2 Auditor determination procedures.**

\* \* \* \* \*

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal in accordance with 42.705-1(b)(1).

\* \* \* \* \*

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

5. Section 52.216-7 is amended by revising the date of the clause and paragraph (d)(2) to read as follows:

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

\* \* \* \* \*

Allowable Cost and Payment (Feb 1998)

\* \* \* \* \*

(d) \* \* \*

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

\* \* \* \* \*

6. Section 52.216-13 is amended by revising the date of the clause; in the introductory text of paragraph (c) by removing the word "below" and inserting "of this clause"; and by revising paragraph (c)(2) to read as follows:

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

\* \* \* \* \*

Allowable Cost and Payment Facilities (Feb 1998)

\* \* \* \* \*

(c) \* \* \*

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

\* \* \* \* \*

7. Section 52.216-15 is amended by revising the date of the clause and paragraph (b) to read as follows:

**52.216-15 Predetermined Indirect Cost Rates.**

\* \* \* \* \*

Predetermined Indirect Cost Rates (Feb 1998)

\* \* \* \* \*

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53**

[FAC 97-03; FAR Case 94-772; Item IV]

RIN 9000-AH24

**Federal Acquisition Regulation; Reorganization of FAR Part 13, Simplified Acquisition Procedures**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reorganize part 13 for clarity and to make other changes to facilitate the use of electronic commerce in Government contracting. 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.

**EFFECTIVE DATE:** February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-03, FAR case 94-772.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213-4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.