

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 42 and 52**

[FAR Case 95-017]

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: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation 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. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 27, 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 95-017 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 95-017.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule amends FAR parts 4, 42 and 52 to improve the process of final settlement of contractor overhead rates. Cost reimbursement and fixed-price incentive contracts require that contractors' overhead rates be settled prior to establishment of final contract prices. At present, the contractor is required to submit a certified indirect cost rate proposal within 90 days after the end of its fiscal year, and a final audit is required of the contractor's proposed rates. However, late proposal

submissions and incomplete supporting cost data are contributing to greatly extended cycle times on overhead settlements. As a result, the 90-day timeframe currently provided for submissions could be considered less than adequate time for contractors to complete their year-end closing and prepare an adequate proposal. In addition, there is currently no sanction or penalty for late submissions.

Improvement of this process by extending the submission date from 90 days to 6 months and identifying the minimum supporting cost data required to be submitted with the proposal can achieve a substantial, overall reduction in cycle time. This proposed rule implements recommendations of the Contract Administration Services Reform Process Action Team by (1) stating that failure to comply with the revised due date for submission of proposed final indirect cost rates may be considered as an indication of an inadequate accounting system and controls; (2) specifying the minimum data which is needed with the contractor's proposal in order to proceed efficiently with the audit; and (3) changing "final indirect cost rate proposal" to "final incurred cost proposal" to more closely reflect the terminology used by the Defense Contract Audit Agency.

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, generally, large businesses provide the types of supplies and services that are procured using cost-reimbursement and fixed-price incentive contracts which require final overhead settlement. 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 95-017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose any substantial change in 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. 3051 *et seq.*

List of Subject in 48 CFR Parts 4, 42 and 52

Government procurement.

Dated: July 18, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 4, 42 and 52 be 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. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.703 is amended by revising paragraph (b)(3) to read as follows:

4.703 Policy.

* * * * *

(b) * * *
(3) The contractor does not meet the original due date for submission of final incurred cost proposals specified in subparagraph (d)(2)(i) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2)(i) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original due date.

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**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.

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(b) * * *
(1) In accordance with the Allowable Cost and Payment clause at FAR 52.216-7 or FAR 52.216-13, the contractor shall submit to the contracting officer and, if required by agency procedures, to the cognizant auditor a final incurred cost proposal together with the supporting cost data specified in paragraphs (b)(1) (i) through (viii) of this subsection. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

(i) Schedule of proposed rates for each expense pool.

(ii) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically

identified and excluded from the proposed pool.

(iii) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(iv) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (b)(1)(iii) of the subsection).

(v) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(vi) Schedule of Government contract participation in the indirect expense pools.

(vii) Schedule of facilities capital cost of money factors computation (if applicable).

(viii) Schedule or computation of allocable independent research and development and bid and proposal costs (if applicable).

Note to paragraph (b)(1): These items represent the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the contracting officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

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

42.705-2 Auditor determination procedures.

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(b) * * * (1) The contractor shall submit to the cognizant contracting officer and auditor a final incurred cost proposal reflecting actual cost experience during the covered period, together with supporting cost data in accordance with 42.705-1(b)(1).

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PART 5—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.

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ALLOWABLE COST AND PAYMENT (DATE)

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(d) * * *

(2) (i) The Contractor shall, within six months after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer in exceptional circumstances, submit to the cognizant Contracting Officer responsible for

negotiating its final indirect rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and the following supporting cost data:

(A) Schedule of proposed rates for each expense pool.

(B) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically identified and excluded from the proposed pool.

(C) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(D) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (d)(2)(i)(C) of this clause).

(E) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(F) Schedule of Government contract participation in the indirect expense pools.

(G) Schedule of facilities capital cost of money factors computation (if applicable).

(H) Schedule or computation of allowable independent research and development and bid and proposal costs (if applicable).

(ii) Paragraphs (d)(2)(i) (A) through (H) of this clause specify the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the Contracting Officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

(iii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

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6. Section 52.216-13 is amended by revising the date of the clause and paragraph (c)(2) to read as follows:

52.216-13 Allowable Cost and Payment—Facilities.

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ALLOWABLE COST AND PAYMENT—FACILITIES (DATE)

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(c) * * *

(2) (i) The Contractor shall within six months after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer in exceptional circumstances, submit to the Contracting Officer and to the cognizant audit activity proposed final indirect cost rates for that period and the following supporting cost data:

(A) Schedule of proposed rates for each expense pool.

(B) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with

unallowable costs specifically identified and excluded from the proposed pool.

(C) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(D) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (c)(2)(i)(C) of this clause).

(E) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(F) Schedule of Government contract participation in the indirect expense pools.

(G) Schedule of facilities capital cost of money factors computation (if applicable).

(H) Schedule or computation of allocable independent research and development and bid and proposal costs (if applicable).

(ii) Paragraphs (c)(2)(i)(A) through (H) of this clause specify the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the Contracting Officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

(iii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

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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.

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PREDETERMINED INDIRECT COST RATES (DATE)

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(b) (1) Not later than six months after the expiration of the Contractor's fiscal year, the Contractor shall submit to the cognizant Contracting Officer under Subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures to, to the cognizant Government audit activity, proposed predetermined indirect cost rates and the following supporting cost data:

(i) Schedule of proposed rates for each expense pool.

(ii) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically identified and excluded from the proposed pool.

(iii) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(iv) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (b)(1)(iii) of this clause).

(v) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(vi) Schedule of Government contract participation in the indirect expense pools.

(vii) Schedule of facilities capital cost of money factors computation (if applicable).

(viii) Schedule of computation of allocable independent research and develop and bid and proposal costs (if applicable).

(2) Paragraphs (b)(1) (i) through (viii) of this clause specify the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the Contracting Officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

(3) The proposed rates shall be based on the Contractor's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rates shall begin as soon as practical after receipt of the Contractor's proposal. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

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