

by the installation, or oral testimony or statements of Government personnel.

* * * * *

9. Section 52.215-9 is amended by revising the clause date and paragraph (a)(2); by redesignating paragraphs (b) through (e) as (c) through (f), respectively and adding a new paragraph (b) to read as follows:

52.215-9 Submission of Offers.

* * * * *

Submission of Offers (Feb. 1997)

(a) * * * (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Offerors using commercial carrier services shall ensure that the proposal is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a) (1) and (2) of this provision when delivered to the office specified in the solicitation.

* * * * *

10. Section 52.215-10 is amended by revising the clause date and paragraphs (a) and (b); by removing paragraph (c) and redesignating paragraphs (d) through (i) as (c) through (h) respectively; and revising the newly designated (d). The revised text reads as follows:

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Feb. 1997)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and—

(1) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(3) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

(5) There is acceptable evidence to establish that it was received at the activity

designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(6) It is the only proposal received.

(b) Any modification of a proposal or quotation, including a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1) through (a)(5) of this provision.

* * * * *

(d) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

11. Section 52.215-36 is amended by revising the clause date and paragraphs (a) and (b); by removing paragraph (c) and redesignating paragraphs (d), (e), (f), and (g) as (c), (d), (e), and (f); and revising the newly designated paragraph (c) to read as follows:

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Overseas) (Feb. 1997)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and—

(1) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(2) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

(3) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(4) It is the only proposal received.

(b) Any modification of a proposal or quotation, including a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of the installation on the proposal wrapper, other

documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

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BILLING CODE 6820-EP-M

48 CFR Part 31

[FAC 90-44; FAR Case 96-012; Item VI]

RIN 9000-AH43

Federal Acquisition Regulation; Foreign Differential Pay

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to amend the Federal Acquisition Regulation (FAR) by deleting the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas. 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: *Effective Date:* December 31, 1996.

Comments Due: To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 3, 1997.

ADDRESSES: Comments should be submitted to: General Services Administration, Ms. Beverly Fayson, FAR Secretariat, 18th & F Streets NW, Room 4037, Washington, DC 20405.

E-mail comments submitted over internet should be addressed to: 96-012@www.ARNET.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 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 FAC 90-44, FAR case 96-012.

SUPPLEMENTARY INFORMATION:

A. Background

The current cost principle at FAR 31.205-6 prohibits contractors from calculating any increased compensation for foreign overseas differential pay on the basis of an employee's specific

increase in income taxes resulting from foreign assignment. Instead, contractors must employ an alternative, less accurate approach. This prohibition was intended to prevent a conflict with the policy at 31.205-41(b)(1) that Federal income taxes are unallowable costs. However, FAR 31.205-6(e)(1) explicitly states that contractors may properly consider increased Federal income taxes in the allowable foreign differential pay provided to overseas employees.

B. Regulatory Flexibility Act

The interim 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 entities use the simplified acquisition procedures, or are awarded on a competitive, fixed-price basis, and do not require application of the FAR cost principles. 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 FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-44, FAR case 96-012) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. The rule is necessary because the cost principle at FAR 31.205-6 imposes unnecessary administrative and accounting requirements, since it prohibits contractors from calculating differential pay on the basis of an employee's specific increase in income taxes resulting from foreign assignment. Instead, contractors must employ an alternative, less accurate approach that may result in an employee being

undercompensated (or overcompensated). It is necessary that an interim rule be published to eliminate expeditiously this unnecessarily burdensome requirement that results in unnecessary administrative costs to contractors and may cause financial hardship on certain individuals. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 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).

2. Section 31.205-6 is amended by revising paragraph (e)(2) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(e) * * *

(2) Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.

* * * * *

[FR Doc. 96-32810 Filed 12-30-96; 8:45 am]

BILLING CODE 6820-EP-M

48 CFR Parts 42 and 52

[FAC 90-44; FAR Case 95-018; Item VII]

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: 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) concerning the procedures relating to final indirect cost rates to permit, with certain restrictions, increased interim

payments to contractors under certain circumstances. 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: March 3, 1997.

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 FAC 90-44, FAR case 95-018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 42.7 and Part 52 to improve procedures for providing payments to contractors under cost-type contracts by (1) permitting, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals; (2) providing for Government release of 75 to 90 percent of all fee withholds under physically completed contracts, after receipt of the contractor's certified final indirect cost rate proposal; and (3) establishing a timeframe for contractor submission of final invoices or vouchers.

A proposed rule was published in the Federal Register at 61 FR 26766, May 28, 1996. One source submitted comments which 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 the rule merely provides for earlier payments to contractors under cost-type contracts.

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 42 and 52

Government procurement.