

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

[FAR Case 1999-026]

RIN 9000-A186

**Federal Acquisition Regulation; Final
Contract Voucher Submission**

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 (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract. This contracting officer decision is final and binding upon the contractor and will not be subject to the right of appeal under the Contract Disputes Act.

DATES: Interested parties should submit comments in writing on or before September 25, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999-026@gsa.gov

Please submit comments only and cite FAR case 1999-026 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (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 FAR case 1999-026.

SUPPLEMENTARY INFORMATION:**A. Background**

The Department of Defense established the Contract Close-out Working Integrated Process Team (CCWIPT) to improve the contract closeout process and reduce associated

paperwork. On April 7, 1999, the team issued a report with a number of recommendations. The report found that the leading reason for contracts to remain open after they are physically complete is the contractor's failure to submit a final voucher to the Government. Therefore, one of the CCWIPT's recommendations is to revise the FAR to indicate that if a contractor has failed to submit any final invoice or voucher for a physically completed contract within the time provided, the contractor shall not have the right to appeal under the Disputes Clause at FAR 52.233-1, Disputes, any determination made by the contracting officer regarding the amount of final payment.

The Councils have adopted the CCWIPT's recommendation in this proposed rule. The rule revises FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to—

- Explicitly state that the contracting officer may issue a unilateral modification that reflects the contracting officer's determination of the amounts due to the contractor under a completed contract. The contracting officer may make this determination if the contractor fails to submit a completion invoice or voucher within the time specified (normally 120 days after settlement of the final indirect cost rates but may be longer, if approved in writing by the contracting officer); and
- Make the contracting officer's determination not subject to appeal under the Disputes Clause of the contract.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule 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 it is unlikely that a contractor would appeal the contracting officer's determination. The contractor would have little left to dispute regarding the amount of final payment on the contract once the contractor has submitted a final indirect cost rate proposal, the auditor has completed a final incurred cost audit; and the contractor and the Government have negotiated and agreed to the final indirect rates. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments

from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 6 U.S.C. 601, *et seq.* (FAR case 1999-026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that 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: July 24, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose 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. chapter 137; and 42 U.S.C. 2473(c).

**PART 42—CONTRACT
ADMINISTRATION AND AUDIT
SERVICES**

2. Amend Section 42.705 by revising paragraph (b) and by adding paragraph (c) to read as follows:

42.705 Final indirect cost rates.

* * * * *

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

(i) Determine the amounts due to the contractor under the contract; and

(ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination is—

(i) Final and binding upon the contractor in discharge of all obligations to the contractor arising under the contract; and

(ii) Not subject to the right of appeal under the Disputes clause.

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

3. Amend Section 52.216-7 by revising the date of the clause; in paragraph (d) by redesignating paragraph (d)(4) as (d)(5) and paragraph (d)(5) as (d)(4), respectively; revising the newly designated (d)(5); by adding paragraph (d)(6); and by amending paragraph (h)(1) by removing “paragraph (d)(4)” and adding, in its place, “paragraph (d)(5)”. The revised text reads as follows:

52.216-7 Allowable Cost and Payment.

* * * * *

**ALLOWABLE COST AND PAYMENT
(DATE)**

* * * * *

(d) * * *

(5) Within 120 days (or longer period, if approved in writing by the Contracting Officer.) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the

time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This Contracting Officer determination is—

(A) Final and binding upon the Contractor in discharge of all obligations to the Contractor arising under the contract; and

(B) Not subject to the right of appeal under the Disputes clause.

* * * * *

[FR Doc. 00-19017 Filed 7-26-00; 8:45 am]

BILLING CODE 6820-EP-P