

the event the general increase in rates is filed within six months of the end of the carrier's fiscal year, the regulated carrier may submit its annual report in lieu of the actual and projected income account exhibit. In addition, Rule 67 of the Commission's Rules of Practice and Procedure, 46 CFR 502.67, requires the carrier to file, under oath, testimony and exhibits constituting its direct case. Both the material submitted pursuant to 46 CFR 552.2(f) and the testimony and exhibits submitted pursuant to Rule 67 (which includes the 46 CFR 552.2(f) material) are public.

The Commission has traditionally recognized that disclosing the information contained in the domestic offshore carriers' annual reports (FMC Forms 377 and 378) to third parties may cause harm to the regulated carrier's competitive position. However, given the changes to the rate of return methodology made in Docket 94-07, the Commission believes that Hawaii's statement merits further consideration. For example, the BTWACC methodology prescribes the use of a proxy group to determine the cost of common-stock equity for a company that does not issue its own common-stock equity, and requires selection criteria for proxy group members which are based on information that may be available only from the annual reports (e.g., annual income in the trade). Further, proxy group selection would most probably require historical information beyond that accompanying a general rate increase filing. Even if a carrier were to include all historical information it used in choosing a proxy group, other historical annual report information might suggest a different proxy group selection.

The Commission has found that most federal and state regulatory agencies do not consider the regulated companies' annual reports to be confidential. On the federal level, both the Federal Energy Regulatory Commission and the Federal Communications Commission consider the annual financial and operating reports of the regulated companies as public information. Likewise, of those state regulatory agencies requiring public utilities to file annual financial reports, the majority regard the contents of those reports to be public information.<sup>1</sup>

The Commission, therefore, is proposing to amend its rules to allow access to the annual reports by the

attorneys general of noncontiguous states, commonwealths, possessions or territories having ports in the relevant trade served by the regulated carrier. The government officers and employees given access to the annual statements would be required to certify to the Commission that the information will not be disclosed to the public and will only be used in connection with analyzing the allowable rate of return for the regulated carrier in FMC proceedings. This should allow entities charged with protecting consumer welfare access to complete financial information concerning the carrier, while at the same time avoiding harm to the regulated carrier.

Commenters on this proposal are directed to specifically address the necessity of obtaining the information contained in the carriers' annual reports and whether that information may be obtained from other sources.

The Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The rule is procedural only and will provide certain parties with more complete information upon which to base a protest under section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845. This proposed rule does not contain a collection of information within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq., as implemented by regulations prescribed within 5 CFR Part 1320. Accordingly, OMB review is not required.

#### List of Subjects in 46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

Therefore, pursuant to 5 U.S.C. 553, sections 18 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817 and 841a, and sections 2 and 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844 and 845, Part 552 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

#### **PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES**

1. The authority citation for Part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841(a), 843, 844, 845, 845a and 847.

2. In § 552.4 a new paragraph (d) is added to read as follows.

#### **§ 552.4 Access to and audit of records**

\* \* \* \* \*

(d). The annual statements filed by the carriers with the Commission may be obtained from the Commission by the attorneys general of every noncontiguous State, Commonwealth, possession or territory having ports in the relevant trade that are served by the carrier, and the employees of such attorneys general, upon the submission of the following certification, under oath, to the Commission:

#### **CERTIFICATION**

I, (Name and title if applicable), of (Full name of entity), having been duly sworn, certify that the annual statements of (Name of Carrier) will be used solely in order to prepare protests to the Federal Maritime Commission ("FMC") or to participate in FMC proceedings relating to (Name of Carrier) and that their contents will not be disclosed to any person who has not signed, under oath, a certification in the form prescribed, which has been filed with the Federal Maritime Commission, unless public disclosure is specifically authorized by an order of the Commission or the presiding officer in an FMC proceeding.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-25581 Filed 10-13-95; 8:45 am]

BILLING CODE 6730-01-M

#### **DEPARTMENT OF DEFENSE**

#### **48 CFR Parts 207, 209, 215, and 242**

#### **Defense Federal Acquisition Regulation Supplement; Precontractual Contract Administration**

**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 provide the contract administration component access to acquisition planning information, set forth the fact that costs or savings related to contract administration may be considered when

<sup>1</sup> See "Table 59, Annual Accounting Report Forms," in Utility Regulatory Policy in the United States and Canada Compilation 1992-1993, National Association of Utility Regulatory Commissioners ("NAURC"), Washington, D.C., 1993, pp. 126-7.

evaluating a contractor's past performance, and establish as a contract administration function the providing of support to program offices and buying activities in precontractual efforts leading to a solicitation or award.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before December 15, 1995, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D015 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Rick Layser, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule amends DFARS Parts 207, 209, 215, and 242 to implement the recommendations of the Department of Defense Contract Administration Services Reform Process Action Team concerning involvement of contract administration activities early in the acquisition process.

**B. Regulatory Flexibility Act**

The proposed changes to the DFARS may 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 changes specify that costs or savings related to contract administration may be considered when evaluating a contractor's past performance. Increased use of this evaluation factor is expected to have a beneficial impact on contractors with good past performance and a negative impact on contractors with poor past performance. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D015 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this proposed rule does not impose any new recordkeeping, information collection

requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 207, 209, 215, and 242

Government procurement.

Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, it is proposed that 48 CFR Parts 207, 209, 215, and 242 be amended as follows:

**PART 207—ACQUISITION PLANS**

1. The authority citation for 48 CFR Parts 207, 209, 215, and 242 continues to read as follows:

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

2. Section 207.104 is added to read as follows:

**207.104 General procedures.**

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

3. Section 207.105 is amended by revising the introductory text and adding paragraph (b)(17)(D) to read as follows:

**207.105 Contents of written acquisition plans.**

For acquisitions covered by 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

\* \* \* \* \*

(D) *Contract administration.* Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

(b) \* \* \*  
(17) \* \* \*

**PART 209—RESPONSIBLE PROSPECTIVE CONTRACTORS**

4. Section 209.103 is amended by adding paragraph (c) to read as follows:

**209.103 policy.**

\* \* \* \* \*

(c) The additional cost of contract administration and audit due to a contractor's performance risk may be considered in evaluating the contractor's price.

**PART 215—CONTRACTING BY NEGOTIATION**

5. Section 215.605 is amended by adding immediately before paragraph (c)) paragraph (b)(S-70) to read as follows:

**215.605 Evaluation factors.**

(b) \* \* \*

(S-70) The costs or savings related to contract administration may be considered when the contractor's past performance or performance risk is likely to result in significant costs or savings.

\* \* \* \* \*

**PART 242—CONTRACT ADMINISTRATION**

6. Section 242.302 is amended by adding paragraph (a)(67) to read as follows:

**242.302 Contract administration functions.**

(a) \* \* \*

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

\* \* \* \* \*

[FR Doc. 95-25346 Filed 10-13-95; 8:45 am]

BILLING CODE 5000-04-M

**48 CFR Part 215**

[DFARS Case 95-D006]

**Defense Federal Acquisition Supplement Contracting by Negotiation**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Department of Defense has decided to withdraw a proposed rule published on March 24, 1995 (60 FR 15528). The rule proposed DFARS revisions to allow the head of the contracting activity to determine the appropriate level for approval of second and subsequent rounds of best and final offers for competitive negotiated acquisitions under other than formal source selection. Public comments