

Order on reconsideration in this proceeding, which had affirmed the *Report and Order*, 56 FR 19229, April 26, 1991, which substituted Channel 253C3 for Channel 253A at Rocky Mount and modified Station WSAY-FM's license to specify the higher class channel. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 90-316, adopted July 31, 1995, and released August 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 95-25763 Filed 10-17-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 93-165; RM-8247]

Radio Broadcasting Services; Athens, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission, pursuant to delegated authority, denies a Petition for Reconsideration filed by David W. Ringer ("Ringer") of the action taken by the Acting Chief, Allocations Branch in MM Docket No. 93-165, establishing a filing window for the filing of applications for authorization to operate on Channel 240A in Athens, Ohio. See 59 F.R. 4008 (January 28, 1994). It also dismisses a Motion for Stay filed by Ringer. The Commission dismisses the reconsideration petition because the petitioner had actual knowledge that an original filing window for Athens had been suspended in an unpublished *Public Notice*. It rejects the contention that the wording of that *Public Notice* was so unclear as to have deprived petitioner of such notice. Accordingly, the *Public Notice* was effective in

suspending the original filing window and the subsequent filing window for Athens, Ohio, established in a later *Order*, was valid.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 776-1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 93-165, adopted October 4, 1995, and released October 12, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1852, and 1870

Acquisition Regulation; Cost or Pricing Data

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule revises NASA policies on cost or pricing data in order to make the policies consistent with recently revised Federal-wide policies.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: William T. Childs, (202) 358-0454.

SUPPLEMENTARY INFORMATION:

Background

The Federal Acquisition Streamlining Act of 1994 (FASA) revised policy on cost or pricing data under the Truth in Negotiations Act (TINA), among other things. The TINA changes have been implemented in the Federal Acquisition Regulation (FAR), and those changes necessitate corresponding revisions of the NASA FAR Supplement (NFS). In

addition, in the spirit of the National Performance Review, changes are being made to the NFS to provide clarity.

(a) Section 1815.804-1(a)(2), formerly 1815.804-3(a)(2), is deleted because it duplicates the revised FAR. A new paragraph is substituted to require that decisions to utilize the FAR cost or pricing data exception for one-offer adequate price competition situations must be approved by the head of the contracting activity, and copies of the approval and basis of price reasonableness must be sent to Headquarters Code HC.

(b) Section 1815.804-1(d), formerly 1815.804-3(d), is revised to accommodate the FAR reduction in approval level for cost or pricing data exceptions to the head of the contracting activity. The requirement to send a copy of the approval to Headquarters Code HC is retained, but some of the accompanying documentation is no longer required to be furnished to Headquarters Code HC.

(c) FAR 15.804-2(a)(2) specifies that below-threshold requirements for cost or pricing data must be approved by the head of the contracting activity. Section 1815.804-2(a) is added to require that copies of such approvals must be furnished to Headquarters Code HC.

(d) FAR 15.804-2(b)(2) provides that certificates of current cost or pricing data may be made applicable as of a date agreed upon by the parties. Section 1815.804-2 is amended to add paragraph (b) to provide guidance that the agreed date should generally be within two weeks of the date of price agreement.

(e) The dollar thresholds for formal prenegotiation reviews at 1815.807-71 are deleted and left to the centers' discretion.

(f) Most of the coverage in 1815.970-3(b) has been removed because it is addressed in subpart 1830.70 (60 FR 37983, July 25, 1995). The discussion of (AS 417 in 1815.970-3(c) has been substantially rewritten to remove a previous misinterpretation of CAS.

(g) Numerous editorial changes have been made. Numbering, section headings, and form titles have been revised to comport with the revisions in FAR subpart 15.8.

This rule pertains to internal NASA procedures only. Because there is no impact on the public, it is not required to be published for comment.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does

not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1816, 1852 and 1870

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1816, 1852, and 1870 are amended as follows.

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR parts 1815, 1816, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1815.8—Price Negotiation

2. The heading of section 1815.804 is revised to read as follows:

1815.804 Cost of pricing data and information other than cost or pricing data.

3. Section 1815.804-3 is redesignated as 1815.804-1 and the redesignated section is amended by revising the heading, revising paragraphs (a)(1) and (2), revising the first and last sentences in paragraph (a)(3)(i), and revising paragraphs (b), (c), (d), and (e)(3) to read as follows:

1815.804-1 Prohibition on obtaining cost of pricing data.

(a)(1) The term "lowest evaluated price," as used in FAR 15.804-1(b)(1)(A), is defined to include all of the factors (for example, mission suitability, cost, past performance, etc.) used in the evaluation of proposals (but see paragraph (a)(2) of this section).

(2) When the adequate price competition exemption will be used in a single-offer situation, the exemption shall be approved by the head of the contracting activity. The exemption document shall cite the authority of 10 U.S.C. 2306a(b)(B), and the procedure in paragraph (d) of this section shall be used.

(3) * * *

(i) The use of this exemption for a cost-reimbursement procurement requires the careful exercise of judgment on the part of the contracting officer based on the application of the guidance in FAR 15.804-1(b)(1)(A) and the regulations of this chapter to the facts of each procurement. * * * As a consequence, the failure to obtain cost or pricing data could result in a competing contractor intentionally underestimating its costs for the purpose of winning the award, which could then cause the actual contract

costs to significantly exceed those proposed.

* * * * *

(b) When an exemption is granted under FAR 15.804-1(c)(4) for repetitive submissions of catalog items, Government approval of the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the exemption's continuation.

(c) When exempting submission under FAR 15.804-1(b)(2)(iii), the contracting officer shall document the reasons for the exemption. It is generally appropriate to include a description of the similarities and differences from a commercial item, along with a discussion of the actual sales prices of the commercial item and an explanation of the value of the differences from that item. If the fact of substantial sales to the general public is well known, information addressing the quantity of sales is not required.

(d) When the authority in FAR 15.804-1(a)(3) to grant an exception waiving the requirement for cost or pricing data is exercised, a copy of the approval shall be addressed to NASA Headquarters, Analysis Division, Code HC, and shall include the name and telephone number of the contracting officer and the basis for the contracting officer's determination of price reasonableness. The following is a sample format for the determination and findings for such a waiver.

National Aeronautics and Space Administration

[Installation Name]

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data

On the basis of the following findings and determination, the requirement for submitting cost or pricing data described below may be waived pursuant to the authority of 10 U.S.C. 2306a(b)(1)(B).

Findings

1. The (1) proposes to enter into a contract with (2) for the procurement of (3).
2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit cost or pricing data. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated: (4)

Determination

The requirement for submission of cost or pricing data described in the above findings for the proposed procurement is hereby waived.

Center Director
Date _____

Notes—

- (1) Name of installation.
- (2) Name of proposed contractor.
- (3) Brief description of supplies or services.
- (4) Identification of the cost or pricing data requirements to be waived. The waiver may be partial, for example, limited to a particular subcontractor. Also describe the circumstances and conditions that make the proposed procurement an exceptional case, and state the reasons justifying the proposed waiver.

(e)(1) * * *

(2) * * *

(3) The review and audit practices of the Government of Canada, the price assurance representations, and the adjustments rendered where profits are excessive are considered to satisfy the requirements of 10 U.S.C. 2306a. Therefore, NASA has waived the requirement for certification of cost or pricing data submitted by the CCC during the period April 1, 1990 through March 31, 1996. This waiver applies only to the certification and does not waive the requirement for submission of the data.

4. Section 1815.804-2 is added as follows:

1815.804-2 Requiring cost or pricing data.

(a) When an authorization to require cost or pricing data for a below-threshold procurement is granted pursuant to FAR 15.804-2(a)(2), a copy of the approval and supporting documentation shall be furnished to NASA Headquarters, Analysis Division, Code HC.

5. Section 1815.807-70 is amended in paragraph (d)(1) by republishing the first sentence and revising the second sentence and by revising the second sentence of paragraph (d)(2) to read as follows:

1815.807-70 Content of the prenegotiation position memorandum.

* * * * *

(d) * * *

(1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. Explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. * * *

(2) * * * For each proposed subcontract meeting the requirement of FAR 15.806-2(a), provide the contracting officer's price or cost analysis and negotiation objective.

* * *

* * * * *

6. Section 1815.807-71 is amended by revising the first sentence to read as follows:

1815.807-71 Installation reviews.

Each contracting activity shall establish a formal system for the review of prenegotiation memoranda. * * *

7. Section 1815.807-72 is amended by revising paragraph (a) to read as follows:

1815.807-72 Headquarters reviews.

* * * * *

(a) *Advance information to be provided to Headquarters.* The installation shall provide Code HS with the following, which shall be furnished as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review:

(1) Five copies of the PPM.

(2) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

* * * * *

8. Section 1815.870-1 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

1815.870-1 General.

(a) When subcontracts have been placed on a price-redetermination or fixed-price-incentive basis and the prime contract type is fixed-price redeterminable or F-PI (successive target), at the time of final pricing it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced that the amount included for subcontracting is reasonable, for example, when realistic cost information or pricing data on subcontract efforts are available.

(b) However, even though the available cost information are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices lower than those predicted in redetermining the prime contract price, other circumstances may require prompt negotiation of the final contract price.

* * *

Subpart 1815.9—Profit

1815.970-2 [Amended]

9. Section 1815.970-2 is amended by removing the paragraph heading in paragraph (f)(1).

10. Section 1815.970-3 is amended by revising the citation "1815.970(b)" to read "1830.7001" in the first sentence of paragraph (a) and by revising paragraph

(b) and removing paragraph (c) to read as follows:

1815.970-3 Facilities capital cost of money.

(a) * * *

(b) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation and CAS 414.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

1816.203-4 [Amended]

11. In paragraph (c) of section 1816.203-4, the citation "FAR 15.804.2 and -3" is revised to read "FAR 15.804-1 and 15.804-2".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Tests of Provisions and Clauses

12. Section 1852.215-70 is amended by revising the date of the clause to read "October 1995" and revising paragraph (a) of the clause to read as follows:

1852.215-70 Increases in estimated costs.

* * * * *

(a) Increases resulting from updating or correcting the cost or pricing data submitted with the proposal;

* * * * *

13. Section 1852.243-70 is amended by revising the date of the clause to read "October 1995" and revising the first sentence of paragraph (d) of the clause to read as follows:

1852.243-70 Engineering change proposals.

* * * * *

(d) Concurrent with the submission of an ECP, the contractor shall, in accordance with FAR 15.804-6, provide a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with appropriate attachments. * * *

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Subpart 1870.1—NASA Acquisition of Investigations System

14. In section 1870.102, paragraph VI of Appendix B to Appendix I is revised to read as follows:

1870.102 NASA acquisition of investigations.

* * * * *

VI. Status of Cost Proposals (U.S. Proposals Only)

The Investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard Form (SF) Form 1411 "Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required)" and certifications and representations required by law and regulation.

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48 CFR Parts 1819 and 1852

Acquisition Regulation; Reduction of Subcontract Reporting

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends acquisition regulations in response to a Presidential memorandum on regulatory reform. This rule reduces the frequency of subcontract reporting.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

This rule makes regulatory changes in response to the Presidential Memorandum of April 21, 1995, on Regulatory Reform—Waiver of Penalties and Reduction of Reports (60 FR 20621, 4-26-95).

Quarterly Subcontracting Reports

Under 48 CFR 1852.219-75, NASA has required the submission of quarterly reports using Standard Form (SF) 295. The SF 295 gives the Agency a summary of subcontracts awarded under the Agency's contracts. The reports have been used by NASA to chart the Agency's progress in achieving a statutorily required small disadvantaged business goal. Annual reporting is not frequent enough to determine the extent of small disadvantaged business participation in NASA programs. However, in the interest of regulatory reform, NASA will reduce the frequency of SF 295 reports from quarterly to semiannually. NASA will also continue to rely on semiannual SF 294 reports of subcontracting activity under individual contracts. The SF 294 enables the Agency to administer subcontracting plans by monitoring the prime contractor's achievement of