

Ottawa Leather Company facility located in Ottawa County, Michigan. This approval makes federally enforceable the State's consent order requiring control of VOC emissions from Eagle-Ottawa facility. The EPA's review of the revision shows that the controls are sufficient to constitute Reasonably Available Control Technology (RACT) for this facility.

DATES: Comments on this proposed action must be received by November 22, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this Federal Register. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Douglas Aburano at (312) 353-6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 28, 1995.

Valdas V. Adamkus,
Regional Administrator.

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DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 216, 232, 233, 235, 239, 246, 252, 253, and Appendix C to Chapter 2

[DFARS Case 95-D708]

Defense Federal Acquisition Regulation Supplement; Truth in Negotiations Act and Related Changes

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect recent amendments to the Federal Acquisition Regulation pertaining to cost or pricing data requirements.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 22, 1995 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D708 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:

Mr. Al Winston, Truth in Negotiations Act Team Leader, at (703) 602-2119. Please cite DFARS Case 95-D708.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Item I of Federal Acquisition Circular (FAC) 90-32, published at 60 FR 48206 on September 18, 1995, amended the Federal Acquisition Regulation to implement requirements of the Act pertaining to the submission of cost or pricing data. This rule proposes amendments to the DFARS to conform to the FAR amendments published as Item I of FAC 90-32. This rule also proposes to delete DFARS language pertaining to work measurement systems, as Section 2201(b) of the Act repealed 10 U.S.C. 2406, the primary statute covering work measurement systems.

B. Regulatory Flexibility Act

The 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 the rule primarily consists of conforming DFARS amendments to reflect existing FAR requirements for submission of cost or pricing data. An initial regulatory flexibility analysis, therefore, has not been performed. 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-D708 in correspondence.

C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements 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 204, 215, 216, 232, 233, 235, 239, 246, 252, 253, and Appendix C

Government procurement.

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

Therefore, it is proposed that 48 CFR Parts 204, 215, 216, 232, 233, 235, 239, 246, 252, 253, and Appendix C be amended as follows:

1. The authority citation for 48 CFR Parts 204, 215, 216, 232, 233, 235, 239, 246, 252, 253, and Appendix C continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.805 is amended by revising paragraph (5) to read as follows:

204.805 Disposal of contract files.

* * * * *

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to cost or pricing data (see FAR 15.804-2), for six years. It is impossible to determine the final payment date in order to measure the six-year period, retain the files for nine years.

PART 215—CONTRACTING BY NEGOTIATION

215.801 [Removed]

3. Section 215.801 is removed.

4. Sections 215.804 and 215.804-1 are revised to read as follows:

215.804 Cost or pricing data and information other than cost or pricing data.

215.804-1 Prohibition of obtaining cost or pricing data.

(b) *Standards for exceptions from cost or pricing data requirements.* (1) Adequate price competition. (A) An example of a price "based on" adequate price competition is exercise of a priced option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable under FAR 17.207(d)

(B) Dual or multiple source programs.

(I) In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain some data to assist in price analysis.

(2) Adequate price competition normally exists when—

(i) Price are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors who are individually capable of producing the full quantity; and

(ii) The price reasonableness of all prices awarded in clearly established on the basis of price analysis (see FAR 15.805–2).

(3) If price reasonableness cannot be determined on the basis of price analysis, including the results of negotiations, the exception at FAR 15.804–1(a)(1)(i) from submission of cost or pricing data shall not apply.

(5) Exceptional cases.

(A) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission of cost or pricing data on all acquisitions.

(B) The DoD has waived cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. However, the contracting officer shall require—

(I) Submission of information other than cost or pricing data to the extent necessary to determine reasonableness of the price and cost realism; and

(2) Cost or pricing data from subcontractors which are not nonprofit organizations.

215.804–3 [Removed]

5. Section 215.804–3 is removed.

215.804–6 [Amended]

6. Section 215.804–6 is amended by redesignating paragraph (b)(2)(A) as (b)(1)(A).

215.804–8 [Amended]

7. Section 215.804–8 is amended by removing paragraph (1); by removing the paragraph (2) designation; and by redesignating paragraphs (i) and (ii) as (1) and (2) respectively.

8. Section 215.805–5 is amended by revising paragraph (a)(1)(A) to read as follows:

215.805–5 Field pricing support.

(a)(1)(A) Contracting officers shall request field pricing reports for—

(1) Fixed-price proposals exceeding the cost or pricing data threshold;

(2) Cost-type proposals exceeding the cost or pricing data threshold from offerors with significant estimating system deficiencies (see 215.811–70(a)(3) and (c)(2) (i)); or

* * * * *

9. Section 215.805–70 is amended by revising paragraph (b)(2) to read as follows:

215.805–70 Cost realism analysis.

* * * * *

(b) * * *

(2) Do not request submission of cost or pricing data.

215.811–70 [Amended]

10. Section 215.811–70 is amended by removing the word “certified” in paragraphs (b)(2)(i), (b)(2)(ii), and (h); and by removing the last sentence of paragraph (g)(3)(ii).

215.872 [Removed and Reserved]

11. Section 215.872 is removed and reserved.

215.872–1, 215.872–2, 215.872–3, and 215.872–4 Removed]

12. Sections 215.872–1, 215.872–2, 215.872–3, and 215.872–4 are removed.

PART 216—TYPES OF CONTRACTS

216.203–4 [Amended]

13. Section 216.203–4 is amended in the first sentence of paragraph (d)(xvi) by revising the reference “Far 15.804–3” to read “FAR 15.804–1”.

216.203–4–70 [Amended]

14. Section 216.203–4–70 is amended in paragraph (a)(1)(ii) by revising the reference “FAR 15.804–3(c)” to read “FAR 15.804–1(b)(2)”; and in paragraphs (a)(2), (b)(4), and (b)(6) by revising the reference “FAR 15.804–3” to read “FAR 15.804–1”.

PART 232—CONTRACT FINANCING

232.502–1–71 [Amended]

15. Section 232.502–1–71 is amended in paragraph (b)(3) by removing the word “certified” and by revising the reference “FAR 15.804–2” to read “FAR 15.801”.

PART 233—PROTESTS, DISPUTES, AND APPEALS

233.7000 [Amended]

16. Section 233.7000 is amended in paragraph (d) by revising the reference “FAR 15.804–2(a)(1)(ii)” to read “FAR 15.804–2(a)(1)(iii)”.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

17. Section 235.015–71 is amended in paragraph (i)(4) by revising the entry FAR 52.215–27 to read as follows:

235.015–71 Short form research contract (SFRC).

(i) * * *

(4) * * *

FAR 52.215–27 Termination of Defined Benefit Pension Plans (Applies if cost or pricing data are required and

cost determinations are subject to FAR subpart 31.2)

* * * * *

PART 239—ACQUISITION OF INFORMATION RESOURCES

18. Section 239.7406 is amended by revising paragraph (c) and the double asterisked statement at the end of paragraph (f) to read as follows:

239.7406 Cost or pricing data.

* * * * *

(c) Unless prohibited by FAR 15.804–1, contracting officers shall obtain certified cost or pricing data when unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805–2). * * *

(f) * * *

* * * Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, another data agreed upon between the parties.

* * * * *

PART 246—QUALITY ASSURANCE

246.770–1 [Amended]

19. Section 246.770–1 is amended in paragraph (f)(2)(i) by revising the reference “FAR 15.804–3(c)” to read “FAR 15.804–1(a)(1)(ii)”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215–7000 [Removed and Reserved]

20. Section 252.215–7000 is removed and reserved.

252.215–7002 [Amended]

21. Section 252.215–7002 is amended in paragraphs (c)(1) and (c)(2)(i) by removing the word “certified”.

252.216–7000 [Amended]

22. Section 252.216–7000 is amended in paragraph (a)(2) by revising the reference “FAR 15.804–3” to read “FAR 15.804–1”.

252.216–7001 [Amended]

23. Section 252.216–7001 is amended in paragraph (a)(1)(ii) by revising the reference “FAR 15.804–3” to read “FAR 15.804–1”.

24. Section 252.243–7000 is amended by revising paragraph (c) to read as follows:

252.243–7000 Engineering change proposals.

* * * * *

(c) When the price** of the engineering change is equal to or greater than the cost or pricing data threshold, the Contractor shall submit—

(1) A completed SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), and

(2) At the time of agreement on price*, or on another date agreed upon between the parties, a signed Certificate of Current Cost or Pricing Data.

PART 253—FORMS

25. Section 253.204-70 is amended by revising paragraph (c)(4)(xi) (A), (B) and (C) to read as follows:

253.204-70 DD Form 350, Individual Contracting Action Report.

* * * * *

(c) * * *

(4) * * *

(xi) *Block C11, Cost or Pricing Data.*

* * *

(A) *Code Y—Yes—Obtained.* Enter code Y when cost or pricing data were obtained for the contracting action (see FAR 15.804-2).

(B) *Code N—No—Not Obtained.* Enter code N when cost or pricing data were not obtained because data were not required (see FAR 15.804-2) or an exception was granted (see FAR 15.804-1).

(C) *Code W—Not Obtained—Waived.* Enter Code W when cost or pricing data were not obtained because the requirement was waived (see FAR 15.804-1(a)(3) and 215.804-1(b)(5)).

* * * * *

Appendix C—Contractor Purchasing System Reviews

26. In Appendix C to Chapter 2, Section C-208.3 is amended in the second sentence of paragraph (a) by revising the reference "FAR 15.804-3(b)" to read "FAR 15.804-1(b)".

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-121; Amdt. 195-51B]

RIN 2137-AB 46

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking; Extension of time for compliance.

SUMMARY: This document proposes to extend the time for compliance with the requirements to plan and schedule

pressure testing of older hazardous liquid and carbon dioxide pipelines. Plans are now required by December 7, 1995. This extension of time for compliance is in response to a petition from the American Petroleum Institute (API) to apply a risk-based alternative to the required pressure testing of older pipelines. The extension of time will allow RSPA time to consider the petition.

DATES: The deadline that establishes regulations for planning and scheduling pressure testing is proposed to be extended to December 7, 1996. All other deadlines remain intact. Comments on this notice of proposed rulemaking (NPRM) must be received on or before November 22, 1995.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366-4571, regarding the subject matter of this document, or the Dockets Unit (202) 366-4453, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION: In a petition dated June 23, 1995, API submitted a risk-based alternative to the pressure testing rule and requested that RSPA delay implementation of the rule until the API proposal has been given full consideration. A copy of the API proposal is available in the docket. API urged that the rule on pressure testing older hazardous liquid and carbon dioxide pipelines presents an opportunity to apply a risk-based approach to pressure testing, and proposed a risk-based alternative to the final rule issued on June 7, 1994. API argued that its proposal would allow operators to focus resources and effect a greater reduction in the overall risk from pipeline accidents. API has requested a high priority be placed on reviewing their proposal because of the compliance dates for the pressure testing rule. In addition, RSPA has received a few phone calls and requests

of waiver of compliance with the June 7, 1994 final rule.

Because RSPA has been working actively with the pipeline industry to develop a risk management framework for pipeline regulations, RSPA wants to evaluate the API proposal carefully. RSPA realizes that substantial planning is required before pressure testing older pipelines. Operators will need time to prepare pipeline systems for testing and to arrange for personnel and equipment to conduct the tests. System changes and actual testing must be coordinated with operations to minimize the impact on refineries, distributors, and users of the transported products. Also, operators need time to assure that testing is done safely, with the least environmental risk, and in accordance with applicable Federal and State regulations.

Thus, RSPA is proposing to extend the time for compliance to allow evaluation of the API petition. Although the comment period on this proposed extension is limited to thirty days, RSPA recognizes that a final rule cannot be published well in advance of the current compliance date of December 7, 1995. Thus, in order to prevent imposing an undue burden on operators of pipelines which would have to prepare the plans anyway because of late issuance of the final rule, RSPA announces that it will not enforce the December 7, 1995, compliance date prior to a final rule on this notice. RSPA is issuing this NPRM with less than 60 days notice because of the limited time available between this date and December 7, 1995.

Impact Assessment

This notice proposes to extend the time for compliance of the final rule establishing regulations for pressure testing older hazardous liquid and carbon dioxide pipelines published on June 7, 1994, for one year, so there is no additional cost to comply with these rules. This proposed rule is considered to be non-significant under Executive Order 12286, and DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This extension does not warrant preparation of a Regulatory Evaluation. Also, based on the facts available concerning the impact of this proposed rule, I certify under section 606 of the Regulatory Flexibility Act that it does not have a significant impact on a substantial number of small entities. This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685) and found not to warrant preparation of a Federalism Assessment.