

DoD will use the following guidelines to evaluate requests for defense capability preservation agreements:

(1) The Under Secretary of Defense for Acquisition and Technology must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b).

The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a company is able to obtain.

(2) An agreement generally will be considered only for a company or business segment with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to DoD, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by DoD.

(d) *Cost-reimbursement rules.* If DoD enters into a defense capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) DoD may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, DoD may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, DoD will consider factors such as the impact of pre-existing firm-fixed-price DoD contracts on the amount of costs that would be reimbursed by DoD, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a defense capability preservation agreement, together with appropriate justification, through the Deputy Under Secretary of Defense for Industrial Affairs and Installations, to the Under Secretary of Defense for Acquisition and Technology, who has exclusive approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

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DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 97-D012]

Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Reviews

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 revise guidance pertaining to the conduct of Contractor/Insurance Pension Reviews (CIPRs).
DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 20, 1997 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. Laysner, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

Telefax number (703) 602-0350. Please cite DFARS Case 97-D012 in all correspondence related to this issue.

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

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Subpart 242.73 to more clearly define requirements for conducting CIPRs; to eliminate the requirement for conducting a CIPR every 2 years; and to require the performance of special CIPRs under certain circumstances.

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 applies only to contractors whose annual qualifying sales to the Government exceed \$40 million, and no small entities are known to meet this criteria. 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 DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D012 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule imposes no information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 242 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 242 continues to read as follows:

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

PART 242—CONTRACT ADMINISTRATION

2. Sections 242.7301 through 242.2703 are revised to read as follows:

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of

insurance/pension costs in Government contracts. Insurance/pension specialists and the Defense Contract Audit Agency (DCAA) assist ACOs in making these determinations by conducting CIPRs.

(b) CIPRs can take the following forms:

(1) *Initial CIPR*. A comprehensive review of the contractor's insurance program, pension plan, and other deferred compensation plan. Includes a detailed review of the contractor's policies, procedures, and practices to determine whether the programs and plans in compliance with FAR and Cost Accounting Standards (CAS).

(2) *Special CIPR*. A review of the contractor's insurance program, pension plan, or other deferred compensation plan where the review concentrates on specific significant areas.

(3) *Incurred cost CIPR*. A review of costs incurred for insurance, pension, or other deferred compensation to determine allowability and compliance with FAR, CAS, and contract clauses.

(4) *Forward pricing CIPR*. A review of costs proposed for insurance, pension, or other deferred compensation to determine allowability and compliance with FAR and CAS.

(c) As the DoD Executive Agency, the Defense Logistics Agency provides program management and participates with DCAA in the performance of all CIPRs meeting the criteria in 242.7302.

(d) When special reviews of the contractor's insurance/pension program are desired, forward a request to the ACO. The review should be performed as part of an ACO-initiated special CIPR or, if possible, as part of the incurred cost or forward pricing CIPR if one is scheduled to be conducted in the near future.

242.7302 Requirements.

(a) An initial CIPR shall be conducted within 2 years after a contractor first exceeds \$40 million of annual qualifying sales to the Government. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.804, or which are contracts other than firm-fixed-price or fixed-price with economic price adjustment. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR shall be performed for all contractors (including, but not limited to, those meeting the requirements in paragraph (a) of this section), when any of the following circumstances exists and it is anticipated that there may be a

significant impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in the insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) Follow-up on contractor implementation of prior CIPR recommendations is needed.

(5) Verification of Government recovery of credits is needed.

(c) Incurred cost and forward pricing CIPRs shall be performed when it is determined that participation of an insurance/pension specialist is essential to determine cost allowability.

242.7303 Responsibilities.

(a) The administrative contracting officer is responsible for—

(1) Determining the need for a CIPR under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate Defense Logistics Agency activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the insurance/pension specialist and DCAA;

(4) Reviewing the CIPR report, advising the contractor of the results, and asking the contractor to submit any significant changes in insurance/pension plans for review and acceptance prior to making the change;

(5) Providing other interested contracting officers copies of documents related to the CIPR;

(6) Ensuring adequate follow-up on all CIPR recommendations; and

(7) Performing contract administration responsibilities related to Cost Accounting Standards administration as delineated in FAR subparts 30.2 and 30.6.

(b) The insurance/pension specialist responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the military departments and DCAA a copy of the schedule;

(2) Heading the team that conducts the review (the team leader). Another party may be designated as the team leader when agreed to by both the insurance/pension specialist and that party. The team leader is responsible for—

(i) Maintaining complete documentation for CIPR reports;

(ii) To the extent possible, resolving discrepancies between adult reports and

CIPR draft reports prior to releasing the final CIPR report;

(iii) Preparing and distributing the final CIPR report;

(iv) Providing the final audit report and/or the insurance/pension specialist's report as an attachment to the CIPR report; and

(v) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(3) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) DCAA is responsible for—

(1) Participating as a member of the CIPR team;

(2) Submitting information and advice to the team based on analysis of the contractor's books, accounting records, and other related data;

(3) Issuing an audit report to the insurance/pension specialist for incorporation into the final CIPR report; and

(4) Performing contract audit responsibilities related to Cost Accounting Standards administration as delineated in FAR subparts 30.2 and 30.6.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket PS-128; Amdt. 199-15]

RIN 2137-AC84

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration proposes to modify current procedures in its drug testing regulations governing situations in which pipeline employees test positive on a drug test. The proposed changes would require pipeline operators to require employees who test positive for the presence of prohibited drugs or who refuse to take a required drug test to be evaluated by a substance abuse professional (SAP), who could require an employee to undergo a rehabilitation program prior to the