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

## PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.7003–1 is amended in the heading by removing the word ''material'' and adding in its place the world ''materiel''; and by revising paragraph (b)(2)(ii) to read as follows:

**208.7003–1 Assignments under integrated materiel management (IMM).**

* * * * *

(b) * * *

(2) * * *

(ii) For DLA:

Defense Supply Center, Columbus, ATTN: DSCC–BDL, P.O. Box 3990, Columbus, OH 43216–5000

Defense Energy Support Center, ATTN: DESC–FI, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6222

Defense Supply Center, Richmond, ATTN: DSCR–RZO, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000

Defense Supply Center, Philadelphia, ATTN: DSCP–ILSI (for General and Industrial), DSCP–OCS (for Medical, Clothing, and Textiles), 700 Robbins Avenue, Bldg. 4, Philadelphia, PA 19111–5096

In addition, forward a copy of each request to:

Defense Logistics Support Command, ATTN: DLSC–LS, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.

* * * * *

## PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

3. Section 251.102 is amended in Table 51–1 by revising paragraph 2.b. to read as follows:

**25.102 Authorization to use Government supply sources.**

* * * * *

TABLE 51–1—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

* * * * *

2. * * *

b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the following:

(1) Federal Standard Requisitioning and Issues Procedures (FEDSTRIP) (GSA FEDSTRIP Operating Guide: FPMR 101–26.2 (41 CFR 101–26.2)). Copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402; telephone (202) 512–1800; telefax (202) 512–2250.

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25–1–M). Copies are available from the Defense Logistics Agency, Administrative Support Center East, ATTN: ASCE–WS, 14 Dedication Drive, Suite 3, POD 43, New Cumberland, PA 17070–5011; telephone 1–888–DLA–PUBS (352–7827), or (717) 770–6034; telefax (717) 770–4817.

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[FR Doc. 99–29037 Filed 11–8–99; 8:45 am]

BILLING CODE 5000–04–M

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 215

**[DFARS Case 99–D001]**

## Defense Federal Acquisition Regulation Supplement; Weighted Guidelines and Performance-Based Payments

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

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the weighted guidelines method of computing profit objectives. The rule adds contracts with performance-based payments to the types of contracts that affect a contractor's cost risk.

**EFFECTIVE DATE:** November 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; telefax (703) 602–0350. Please cite DFARS Case 99–D001.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS 215.404–4, Profit, requires contracting officers to use the weighted guidelines method of developing a prenegotiation profit or fee objective on most negotiated contract actions that require cost analysis. This method focuses on three profit factors: performance risk, contract type risk, and facilities capital employed. Calculations using these profit factors result in values that become part of the profit objective.

For contract type risk, the calculations include an assessment of the degree of cost risk that the contractor accepts under varying contract types as adjusted by the costs of contractor-provided financing. Prior to issuance of this final rule, DFARS 215.404–71–3, Contract type risk and working capital adjustment, provided only two financing choices for fixed-price and fixed-price incentive contracts: The contract either would provide progress payments or would offer no financing. This final rule adds contracts with performance-based payments as a third choice.

This rule amends DFARS 215.404–71–3 as follows:

1. Adds firm-fixed-price and fixed-price incentive contracts with performance-based payments to the table of contract types at 215.404–71–3(c).

2. Adds evaluation criteria at 215.404–71–3(d) that contracting officers should consider when determining the value for contract type risk associated with contracts using performance-based payments.

3. Removes the reference to the flexible progress payments type of financing at 215.404–71–3(e)(3). DoD does not permit the use of flexible progress payments for contracts awarded as a result of solicitations issued on or after November 11, 1993. A final rule, published in the **Federal Register** on February 23, 1999 (64 FR 8731), removed references to flexible progress payments from DFARS Part 232. The change to 215.404–71–3(e)(3) in this final rule does not reflect a policy change but merely removes obsolete language.

4. Makes editorial changes.

DoD published a proposed rule in the **Federal Register** on May 4, 1999 (64 FR 23814). Three sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, would not use the weighted guidelines method of profit computation. The weighted guidelines method normally is used to compute profit objectives on negotiated contract actions at or above $500,000.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 Part 215

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 215 is amended as follows:

1. The authority citation for 48 CFR part 215 continues to read as follows:

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

## PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–71–3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

**215.404–71–3 Contract type risk and working capital adjustment.**

* * * * *

(c) *Values: Normal and designated ranges.*

| Contract type | Notes | Normal value (percent) | Designated range (percent) |
|---|---|---|---|
| Firm-fixed-price, no financing | (1) | 5.0 | 4 to 6. |
| Firm-fixed-price, with performance-based payments | (6) | 4.0 | 2.5 to 5.5 |
| Firm-fixed-price, with progress payments | (2) | 3.0 | 2 to 4. |
| Fixed-price incentive, no financing | (1) | 3.0 | 2 to 4. |
| Fixed-price incentive, with performance-based payments | (6) | 2.0 | 0.5 to 3.5. |
| Fixed-price with redetermination provision | (3) | ..... | |
| Fixed-price incentive, with progress payments | (2) | 1.0 | 0 to 2. |
| Cost-plus-incentive-free | (4) | 1.0 | 0 to 2. |
| Cost-plus-fixed-fee | (4) | 0.5 | 0 to 1. |
| Time-and-materials (including overhaul contracts priced on time-and-materials basis) | (5) | 0.5 | 0 to 1. |
| Labor-hour | (5) | 0.5 | 0 to 1. |
| Firm-fixed-price, level-of-effort | (5) | 0.5 | 0 to 1. |

(1) ''No financing'' means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(d) *Evaluation criteria.*

(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When the contract contains provisions for performance-based payments—

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to the definitization of the contract action (also see 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items; or

(v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relative short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk;

(iv) Incentive provisions that place a low degree of risk on the contractor;

(v) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vi) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

(1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 75 percent, the portion that the contractor finances is 25 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

* * * * *

[FR Doc. 99–29038 Filed 11–8–99 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## 49 CFR Part 601

## Responsibilities of the Administrator

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Transit Administration (FTA) is amending 49 CFR Part 601 to make express that the Deputy Administrator serves as the Administrator's ''first assistant'' within the meaning of the Federal Vacancies Reform Act of 1998 and thus serves as the Acting Administrator when the Administrator's position is vacant.

**EFFECTIVE DATE:** November 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A.S. Martineau, Office of Chief Counsel, Federal Transit Administration, Room 9316, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–1936.

**SUPPLEMENTARY INFORMATION:** This rule amends 49 CFR section 601.4 to provide that the Deputy Administrator is the Administrator's ''first assistant'' for purposes of the Federal Vacancies Reform Act of 1998 (Pub. L. 105–277) and to delete references to agency officials who shall perform the duties of the Administrator in the absence or disability of the ''first assistant'' and to, instead, refer to the internal FTA order on succession of authority. This rules does not impose substantive requirements; it simply updates the Code of Federal to conform FTA's organizational provisions to the Federal Vacancies Reform Act to 1998, which alters the way in which vacancies in presidentially appointed, Senate-conformed offices within the executive branch may be filled on a temporary basis.

This final rule is ministerial in nature and relates only to agency management, organization, procedure, and practice and is not a regulation or rule for the purposes of Executive Order No. 12866. Therefore, the FTA has determined that notice and comment are unnecessary and that the rule is exempt for prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). These changes will not have substantive impact and FTA does not expect to receive substantive comments on the rule. Therefore, FTA finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register.**

### Regulatory Analyses and Notices

FTA has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. FTA certifies that this rule will not have a significant economic impact on a substantial number of small entities. FTA does not believe that there are sufficient federalism implications to warrant the preparation of a federalism assessment.

### Paper Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Unfunded Mandates Reform Act of 1995

FTA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

### List of Subjects in 49 CFR Part 601

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Federal Transit Administration amends 49 CFR Part 601 as follows:

## PART 601—[Amended]

1. The authority citation for Part 601 is revised to read as follows:

**Authority:** 49 U.S.C. 1657, 1659; Reorganization Plan No. 2 of 1968 (82 Stat. 1369); 49 CFR 1.51.

2. Revise section 601.4 to read as follows:

### § 601.4 Responsibilities of the Administrator.

The Administrator is responsible for the planning, direction, and control of the activities of FTA and has authority to approve urban mass transportation grants, loans, and contracts. The Deputy Administrator is the ''first assistant'' for purposes of the Federal Vacancies Reform Act of 1998 (Pub. L. 105–277) and shall, in the event of the absence or disability of the Administrator, serve as the Acting Administrator, subject to the limitations in that Act. In the event of the absence or disability of both the Administrator and the Deputy Administrator, officials designated by the agency's internal order on succession shall serve as Acting Deputy Administrator and shall perform the duties of the Administrator, except for any non-delegable statutory and/or regulatory duties.

Issued on: October 29, 1999.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 99–28877 Filed 11–8–99; 8:45 am]

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