

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

\* \* \* \* \*

Alternate I (Dec 2000) As prescribed in 225.7019-4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

10. Section 252.225-7023 is added to read as follows:

**252.225-7023 Restriction on Acquisition of Vessel Propellers.**

As prescribed in 225.7020-4, use the following clause:

Restriction on Acquisition of Vessel Propellers (Dec 2000)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers—

(1) Manufactured in the United States or Canada; and

(2) For which all component castings were poured and finished in the United States or Canada.

(b) The restriction in paragraph (a) of this clause—

(1) Does not apply to vessel propellers that are commercial items; and

(2) For other than commercial items, may be waived upon request from the Contractor in accordance with subsection 225.7020-3 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

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BILLING CODE 5000-04-M

**DEPARTMENT OF DEFENSE**

**48 CFR Part 215**

[DFARS Case 2000-D300]

**Defense Federal Acquisition Regulation Supplement; Profit Incentives To Produce Innovative New Technologies**

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

**ACTION:** Final rule.

**SUMMARY:** The Director Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000. Section 813 requires DoD to review its profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining

appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.

**EFFECTIVE DATE:** December 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; facsimile (703) 602-0350. Please cite DFARS Case 2000-D300.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends DoD profit policy to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65). The rule amends the weighted guidelines method of profit computation at DFARS 215.404-71 to combine the management and cost control elements of the performance risk factor; to establish a new "technology incentive" range for technical risk; and to slightly modify some of the cost control standards. In addition, the rule amends DFARS 215.404-4(b) to clarify that DoD departments and agencies must use a structured approach for developing a prenegotiation profit for fee objective on any negotiated contract action when cost or pricing data is obtained.

DoD published a proposed rule at 65 FR 32066 on May 22, 2000. Five sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. The final rule is similar to the proposed rule, except for changes at 215.404-71-2(c)(3) that: (1) Permit use of the technology incentive range for acquisitions that include application of innovative new technologies; and (2) specify that the technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

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 are below \$500,000, are

based on adequate price competition, or are for commercial items, and do not require submission of cost or pricing data.

**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 215.404-4 is amended by revising paragraph (b)(1) introductory text to read as follows:

**215.404-4 Profit.**

(b) \* \* \* (1) Departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404-74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404-75). There are three structured approaches—

\* \* \* \* \*

3. Section 215.404-71-2 is revised to read as follows:

**215.404-71-2 Performance risk.**

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Management/cost control—the degree of management effort necessary—

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
21. ....	Technical .....	(1)	(2)	N/A	N/A
22. ....	Management/Cost Control .....	(1)	(2)	N/A	N/A
23. ....	Reserved.				
24. ....	Performance Risk (Composite) .....	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

[In percentage]

	Assigned weighting	Assigned value	Weighted value
Technical ...	60	5.0	3.0
Management/Cost Control ...	40	4.0	1.6
Composite Value .....	100	.....	4.6

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development and bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

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

[In percentage]

	Normal value	Designated range
Standard .....	4	2 to 6.
Alternate .....	6	4 to 8.
Technology Incentive.	8	6 to 10.

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404-71-4(c)(3)).

(3) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new

technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

- (i) Technology being applied or developed by the contractor;
  - (ii) Technical complexity;
  - (iii) Program maturity;
  - (iv) Performance specifications and tolerances;
  - (v) Delivery schedule; and
  - (vi) Extent of a warranty or guarantee.
- (2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

- (A) Items are being manufactured using specifications with stringent tolerance limits;
- (B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;
- (C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;
- (D) The contractor's independent development and investment has reduced the Government's risk or cost;
- (E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or
- (F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

- (A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or
- (B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases

where the technical risk is low. Indicators are—

- (A) Acquisition is for off-the-shelf items;
  - (B) Requirements are relatively simple;
  - (C) Technology is not complex;
  - (D) Efforts do not require highly skilled personnel;
  - (E) Efforts are routine;
  - (F) Programs are mature; or
  - (G) Acquisition is a follow-on effort or a repetitive type acquisition.
- (ii) The contracting officer may assign a value significantly below normal for—
- (A) Routine services;
  - (B) Production of simple items;
  - (C) Rote entry or routine integration of Government-furnished information; or
  - (D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

- (A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or
- (B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and

reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, dual sourcing, spare parts pricing reform, value engineering);

(vii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(viii) Any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(D) The contractor provides fully documented and reliable cost estimates;

(E) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(F) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing);

(G) The contractor has a proven record of cost tracking and control; or

(H) The contractor aggressively seeks process improvements to reduce costs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the

management effort is minimal.

Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate; or

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property, control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

4. Section 215.404-72 is amended by adding paragraph (b)(1)(iii) to read as follows:

**215.404-72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Do not assign a value from the technology incentive designated range.

\* \* \* \* \*

[FR Doc. 00-31601 Filed 12-12-00; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 217, 219, and 236**

[DFARS Case 2000-D015]

**Defense Federal Acquisition Regulation Supplement; North American Industry Classification System**

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

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement is adopting as final,

without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule converts programs based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS), in accordance with the final rule issued by the Small Business Administration (SBA) on May 15, 2000.

**EFFECTIVE DATE:** December 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2000-D015.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

SBA issued a final rule at 65 FR 30836 on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published at 65 FR 46055 on July 26, 2000, to establish policy for use of the new size standards in Government acquisitions. DoD published an interim rule at 65 FR 50148 on August 17, 2000, to make corresponding changes to the DFARS. One source submitted comments on the interim DFARS rule. DoD considered those comments in the decision to convert the interim rule to a final rule without change.

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 this rule implements the final rule issued by SBA on May 15, 2000, and SBA has certified that the impact of the change from SIC to NAICS on each business will not be substantial.

**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.*