

make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(c) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.7 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

#### **§ 1611.7 Change in financial eligibility status.**

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

#### **§ 1611.8 Representation of groups.**

(a) A recipient may provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has not practical means of obtaining private counsel in the matter for which representation is sought and:

(1) At least a majority of the group's members are financially eligible for LSC-funded legal assistance; or

(2) For a non-membership group, at least a majority of the individuals who are forming or operating the group are

financially eligible for LSC-funded legal assistance; or

(3) The group has as its principal function or activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance; or

(4) The group has as its principal function or activity the furtherance of the interests of those persons in the community who would be financially eligible for LSC-funded legal assistance and the representation sought relates to such function or activity.

(b) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility requirements set forth herein.

(c) Nothing in this part prohibits a recipient from providing legal assistance to a group without regard to the nature or financial eligibility of the group, if the legal assistance is supported by funds other than LSC, and is otherwise permissible under applicable law and regulation.

#### **Appendix A—Legal Services Corporation Poverty Guidelines**

**Note:** Appendix A: The Corporation is not requesting comments on the current Appendix. The Appendix is revised annually, after the Department of Health and Human Services issues the new Federal Poverty Guidelines for that year.

**Victor M. Fortuno,**

*General Counsel and Vice President for Legal Affairs.*

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#### **DEPARTMENT OF DEFENSE**

#### **48 CFR Part 216**

**[DFARS Case 2001-D013]**

#### **Defense Federal Acquisition Regulation Supplement; Provisional Award Fee Payments**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of provisional award fee payments under cost-plus-award-fee contracts. The rule provides for

successfully performing contractors to receive a portion of award fees within an evaluation period, prior to an interim or final evaluation for that period.

**DATES:** DoD will consider all comments received by January 21, 2003.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2001-D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2001-D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, (703) 602-0289.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Cost-reimbursement contracts containing award fees typically provide for an award fee payment no more frequently than every 6 months. This practice may place an undue financial burden on an otherwise successfully performing contractor. Therefore, the proposed rule provides for the payment of provisional award fees within an evaluation period, prior to an interim or final evaluation for that period. The provisional payments are based on (1) successful evaluations for prior evaluation periods, and (2) the fee determining official's expectation that payment of provisional fee amounts will not reduce the overall effectiveness of the award fee incentive.

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 does not expect this rule 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 cost-plus-award-fee contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis. Therefore, DoD has not performed an

initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D013.

### 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 216

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Part 216 as follows:

1. The authority citation for 48 CFR Part 216 continues to read as follows:

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

### PART 216—TYPES OF CONTRACTS

**2. Section 216.405–2 is amended by adding paragraph (b)(3) to read as follows:**

216.405–2 Cost-plus-award-fee contracts.

\* \* \* \* \*

(b) \* \* \*

(3) The CPAF contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to an interim or final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments'

(A) Are made no more frequently than monthly;

(B) Are limited to no more than—  
(1) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(2) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, *e.g.*, if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent x 80 percent) of the award fee available for the current period;

(C) Are superceded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the

payment determined by the evaluation score for the applicable period, the contractor shall either credit the next payment voucher for the amount of the overpayment or refund the difference to the Government, as directed by the contracting officer; and

(D) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

\* \* \* \* \*

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### DEPARTMENT OF DEFENSE

### 48 CFR Part 252

[DFARS Case 2002–D013]

### Defense Federal Acquisition Regulation Supplement; Indian Incentive Clause—Contract Types

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the clause permitting incentive payments for use of Indian organizations as subcontractors may be used in all contract types.

**DATES:** DoD will consider all comments received by January 21, 2003.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2002–D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, (703) 602–1302.

### SUPPLEMENTARY INFORMATION:

### A. Background

The clause at DFARS 252.226–7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts, provides for incentive payments to contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors. Paragraph (e) of the clause presently addresses incentive payments under cost-type, cost-plus-incentive-fee, fixed-price incentive, and firm-fixed-price contracts. Application of the Indian Incentive Program is not limited to these contract types; therefore, this proposed rule eliminates the references to contract types to avoid any misconceptions regarding contract types that are not listed.

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 does not expect this rule 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 is a clarification of existing policy regarding the Indian Incentive Program. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D013.

### 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 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

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