

http://www.customs.ustreas.gov/impoexpo/impoexpo.htm. In particular, see the following:

- (1) General Note 3(c), Products Eligible for Special Tariff treatment.
- (2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.
- (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
- (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and
- (2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

\* \* \* \* \*

**25.400 [Amended]**

3. Amend section 25.400 in paragraph (a)(2) by removing the words "Republic and Honduras" and adding "Republic, Honduras, and Panama," in its place.

**25.404 [Amended]**

4. Amend section 25.404 by removing the second and third sentences.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 5. Amend section 52.225-5 by—
  - a. Removing "Panama," from the definition "Caribbean Basin country"; and
  - b. Revising the definition "Caribbean Basin country end product" to read as follows:

**52.225-5 Trade Agreements.**

\* \* \* \* \*

**Trade Agreements (Feb 2002)**

- (a) \* \* \*
  - \* \* \* \* \*
  - Caribbean Basin country end product*—
  - (1) Means an article that—
    - (i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
    - (B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and
    - (ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

- (A) For this reason, the following articles are not Caribbean Basin country end products:
  - (1) Tuna, prepared or preserved in any manner in airtight containers;
  - (2) Petroleum, or any product derived from petroleum;
  - (3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
  - (4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;
- (B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:
  - (1) General Note 3(c), Products Eligible for Special Tariff treatment.
  - (2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.
  - (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
  - (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and
  - (2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 42 and 52**

[FAC 2001-04; FAR Case 1999-026; Item VI]

RIN 9000-AI86

**Federal Acquisition Regulation; Final Contract Voucher Submission**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract.

**DATES:** *Effective Date:* February 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 2001-04, FAR case 1999-026.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 46332, July 27, 2000, with a request for comment. The proposed rule amended FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to—

- Explicitly state that the contracting officer may issue a unilateral modification that reflects the contracting officer's determination of the amounts due to the contractor under the contract. The contracting officer may make this determination if the contractor fails to submit a completion invoice or voucher within the time specified (normally 120 days after settlement of the final indirect cost rates but may be longer, if approved in writing by the contracting officer); and
- Make the contracting officer's determination not subject to appeal under the Disputes clause of the contract.

Thirteen respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule, which was modified as a result. The following issues merit noting:

- 1. Almost half of the respondents questioned the language in paragraphs 42.705(c)(2) and 52.216-7(d)(6)(ii) of the proposed rule that stated that the contracting officer's decision would not be subject to appeal under the Disputes clause. The Councils agreed that precluding the right to appeal is not equitable and may result in inaccurate financial payment decisions. The rule has been revised by making the contracting officer's decision final and

binding, but does not preclude contractor appeal under the Disputes clause.

2. Several respondents disagreed with the conclusion that contractor failure to submit a final voucher is the leading reason contract closeouts are not accomplished in a timely manner. The Councils agreed that there are many causes for delays in contract closeout and that it would be helpful to list examples of circumstances a contracting officer should consider in deciding whether or not to extend the time for submission of a final voucher or to issue a final decision regarding final payment. The rule has been revised at 42.705(b) by providing examples of extenuating circumstances that may justify the contracting officer's extension of the 120-day due date for submission of a completion invoice or voucher.

3. Several respondents indicated that the rule should define when settlement of final indirect rates takes place. The Councils did not concur since the actual date of settlement depends on the circumstances of the negotiation. Establishing a universal definition of settlement date is unnecessary and would reduce the flexibility of both contractors and contracting officers.

4. One respondent stated that the rule should include a provision requiring the contracting officer to provide written notice to the contractor and to provide an opportunity to respond before the issuance of a unilateral determination of amounts due. The Councils did not agree. The requirement to submit a timely final invoice is already stated in FAR 52.216-7, Allowable Cost and Payment. Therefore, the contractor is already responsible for complying with this requirement or communicating with the contracting officer if the requirement cannot be met. It is unnecessary to repeat contract requirements in separate notices.

5. Several respondents requested that the rule explicitly preclude the application of the proposed revised closeout procedures to existing contracts. The Councils did not concur. Contracting officers already have the authority to determine final voucher payment amounts and issue final decisions. While the new language in this rule makes that authority explicit, it does not, and should not, impact the contracting officer's authority under existing contracts.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 does not change the current policies at FAR 42.705 that require the contractor to submit a completion invoice or voucher within 120 days (or longer period, if approved in writing by the contracting officer) after settlement of the final indirect costs rates. The rule simply makes it explicit that if the contractor fails to submit the completion invoice or voucher within the time required, the contracting officer may determine the amounts due the contractor and record this determination in a unilateral modification.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose 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 Parts 42 and 52

Government procurement.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 42 and 52 as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Amend section 42.705 by revising paragraph (b) and by adding paragraph (c) to read as follows:

### 42.705 Final indirect cost rates.

\* \* \* \* \*

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days

is appropriate, the contracting officer should consider whether there are extenuating circumstances, such as the following:

- (1) Pending closeout of subcontracts awaiting Government audit.
- (2) Pending contractor, subcontractor, or Government claims.
- (3) Delays in the disposition of Government property.
- (4) Delays in contract reconciliation.
- (5) Any other pertinent factors.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

- (i) Determine the amounts due to the contractor under the contract; and
- (ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination must be issued as a final decision in accordance with 33.211.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.216-7 in paragraph (d) by redesignating paragraph (d)(4) as (d)(5) and paragraph (d)(5) as (d)(4), respectively; revising the newly designated (d)(5); adding paragraph (d)(6); and by amending paragraph (h)(1) by removing “paragraph (d)(4)” and adding “paragraph (d)(5)” in its place. The revised text reads as follows:

### 52.216-7 Allowable cost and payment

\* \* \* \* \*

#### Allowable Cost and Payment (Feb 2002)

\* \* \* \* \*

(d) \* \* \*

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

- (A) Determine the amounts due to the Contractor under the contract; and
- (B) Record this determination in a unilateral modification to the contract.
- (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

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