

contract performance and recommending the appropriate fee.

(b) *Fee Determination Official.* Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

1516.404-273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed "above satisfactory" or "excellent" for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

1516.404-274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (c) of 1516.404-273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

3. Section 1516.405 is revised to read as follows:

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216-70, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216-75, Base Fee and Award Fee Proposal (XXX 1994), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages in accordance with FAR 15.903(d).

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1552.216-70 is revised to read as follows:

1552.216-70 Award fee.

As prescribed in 1516.405(a), insert the following clause:

AWARD FEE (XXX 1994)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO) and are not subject to appeal under the Disputes clause.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of Clause)

5. Section 1552.216-75 is added to read as follows:

1552.216-75 Base fee and award fee proposal

As prescribed in 1516.405(b), insert the following clause:

BASE FEE AND AWARD FEE PROPOSAL (XXX 1994)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee within the maximum fee limitation of _____% as stated in FAR 15.903(d). Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than _____% of the total estimated cost, excluding fee. The combined percentage of base and award fee does not exceed _____% of the total estimated cost, excluding fee.

(End of Clause)

Dated: January 6, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM-199; Notice No. 95-4]

RIN 2137-AB35

Enforcement of Motor Carrier Financial Responsibility; Withdrawal of Advance Notice of Proposed Rulemaking

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

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: RSPA is withdrawing an advance notice of proposed rulemaking (ANPRM) issued under Docket HM-199, Enforcement of Motor Carrier Financial Responsibility. The ANPRM solicited comments on the merits of a petition requesting DOT to promulgate a regulation to require each person, offering a hazardous material for transportation in a cargo tank, to obtain proof of financial responsibility from the carrier. This notice removes this action from the regulatory agenda, because there is sufficient evidence that carriers are already complying with financial responsibility requirements in the Federal motor carrier safety regulations.

FOR FURTHER INFORMATION CONTACT:

Diane LaValle, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: In 1986, RSPA received a petition for rulemaking (P-0093) from the National Tank Truck Carriers, Inc. (NTTC) requesting amendment of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to require each person who offers a hazardous material for transportation by highway in a cargo tank to obtain documentary proof that the motor carrier possesses the minimum level of financial responsibility currently prescribed by 49 CFR part 387. Since 1980, all motor carriers have been required to provide financial responsibility in varying amounts and forms, usually by insurance and/or bonding. Federal Highway Administration (FHWA) regulations require all carriers to have appropriate evidence of financial responsibility available for public inspection at their principal place of business (49 CFR 387.31). The Interstate Commerce Commission (ICC) issued conforming regulations applicable to for-hire carriers of property which required use of a form to be maintained within the carrier's public docket at ICC (49 CFR 1043.7). These actions provided methods for carriers to document the status of their financial responsibility. However, NTTC believed that a shipper should have knowledge of financial responsibility at the time it offered its shipment. NTTC also referred to the lack of adequate enforcement staff to effectively determine carrier compliance. According to NTTC, a major benefit of the requested change in