

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

PART 25—FOREIGN ACQUISITION

25.1001 [Amended]

2. Section 25.1001 is amended in the definition of "Sanctioned member state of the EC" by removing "Federal Republic of Germany,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225-18 [Amended]

3. Section 52.225-18 is amended by removing "Federal Republic of Germany," from the definition "Sanctioned member state of the EC".

52.225-19 [Amended]

4. Section 52.225-19 is amended by removing "Federal Republic of Germany," from the definition "Sanctioned member state of the European Community (EC)".

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90-27; FAR Case 94-9; Item VI]

RIN 9000-AC14

Federal Acquisition Regulation; Interdivisional Transfers

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR). The cost principle criteria for cost of interdivisional transfers are amended to permit interdivisional transfers at price rather than cost under criteria that more closely approximate those applied to subcontracts eligible for exemption or waiver of cost or pricing data.

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

DATES: *Effective Date:* May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-27, FAR case 94-9 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-27, FAR case 94-9.

SUPPLEMENTARY INFORMATION:

A. Background

This interim FAR rule revises FAR 31.205-26, Material Costs, to make it clear that interdivisional transfers made at price should be treated in the same manner as subcontracts for purposes of applying the requirements of FAR 15.804-3.

B. Regulatory Flexibility Act

This interim rule is not expected 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 most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. The cost principles only apply to contracts for which cost or pricing data has been submitted. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 90-27, FAR case 94-9), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to provide an immediate benefit to Government and Industry. The rule will permit interdivisional transfers at price rather than cost for commercial items, under criteria identical to those used in applying the exception provisions of the Truth in Negotiations Act to subcontracts. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 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).

2. Section 31.205-26 is amended by revising paragraph (e) to read as follows:

31.205-26 Material costs.

* * * * *

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when—

(1)(i) The price is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 15.804-3;

(ii) The price is based on "adequate price competition" in accordance with 15.804-3; or

(iii) A waiver is granted in accordance with 15.804-3(i); and

(2) The contracting officer has not determined the price to be unreasonable.

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