

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 90-44;  
Introduction**

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

**ACTION:** Summary presentation of final and interim rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the FAR Council in this Federal Acquisition Circular (FAC) 90-44. Each rule follows this document in the order listed below. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the internet at <http://www.gsa.gov/far/compliance>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**FOR FURTHER INFORMATION CONTACT:**

The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact Beverly Wayson, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-44 and specific FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 90-44 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I .....	Automatic Data Processing Equipment Leasing Costs (Interim) .....	96-010	Olson
II .....	Major System Definition .....	96-322	O'Neill
III .....	Preaward Debriefings .....	96-304	DeStefano
IV .....	Certification Requirements—Drug-Free Workplace .....	96-311	DeStefano
V .....	Consideration of Late Offers .....	95-019	DeStefano
VI .....	Foreign Differential Pay (Interim) .....	96-012	Olson
VII .....	Final Indirect Cost Rates .....	95-018	Klein
VIII .....	Modification of Existing Contracts (Interim) .....	96-606	DeStefano

**Item I—Automatic Data Processing Equipment Leasing Costs (FAR Case 96-010)**

This interim rule deletes the cost principle at FAR 31.205-2, Automatic Data Processing Equipment (ADPE) Leasing Costs, the ADPE definition at 31.001, and references to the term ADPE found elsewhere in Part 31.

**Item II—Major System Definition (FAR Case 96-322)**

This final rule amends the definition of “major system” at FAR 2.101 to increase the dollar thresholds applicable to the Department of Defense. The rule implements 10 U.S.C. 2302(5) as amended by Section 805 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201).

**Item III—Preaward Debriefings (FAR Case 96-304)**

This final rule revises FAR Subpart 15.10 to implement Section 4104 of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). Section 4104 requires that, prior to contract award, contracting officers provide a debriefing to any interested offeror on the reasons for that offeror’s exclusion from the competitive range in a competitive negotiation.

**Item IV—Certification Requirements—Drug-Free Workplace (FAR Case 96-311)**

This final rule amends FAR Parts 9, 13, 23, and 52 to delete the requirement for an offeror to provide a certification regarding a drug-free workplace. The

rule implements Section 4301(a)(3) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106).

**Item V—Consideration of Late Offers (FAR Case 95-019)**

This final rule amends the late bid rule to allow an offer to be accepted if the late receipt was due primarily to Government mishandling after receipt at the Government installation. The rule recognizes the use of hand-carried offers (including delivery by a commercial carrier) as a common business practice and provides flexibility in determining when an offer (bid or proposal) was received at the Government activity, by applying standards used by the General Accounting Office. The rule also expands the definition of acceptable evidence to support acceptance of a late offer and adds a new exception at 52.215-10(a)(5) and 52.215-36(a)(3) which allows consideration of a proposal that was misdirected or misdelivered (not necessarily through mishandling) to an office other than that designated for receipt of offers in the solicitation. These changes do not apply to commercial item solicitations which contain the provision at 52.212-1(f), Late Offers.

**Item VI—Foreign Differential Pay (FAR Case 96-012)**

This interim rule deletes the prohibition at FAR 31.205-6(e)(2) on the calculation of foreign differential pay based directly on an employee’s specific

increase in income taxes resulting from assignment overseas.

**Item VII—Final Indirect Cost Rates (FAR Case 95-018)**

This final rule amends FAR Subpart 42.7 and Part 52 to improve procedures for providing payments to contractors under cost-type contracts by permitting, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals, providing for Government release of 75 to 90 percent of all fee withholdings under physically completed contracts, after receipt of the contractor’s certified final indirect cost rate proposal, and establishing a timeframe for contractor submission of final invoices or vouchers.

**Item VIII—Modification of Existing Contracts (FAR Case 96-606)**

This interim rule amends FAR 43.102 to provide for modification of existing contracts without requiring consideration, upon request of the contractor, to incorporate changes authorized by the Clinger-Cohen Act of 1996 (Pub. L. 104-106).

Dated: December 19, 1996.  
Edward C. Loeb,  
*Director, Federal Acquisition Policy Division.*  
Federal Acquisition Circular  
FAC 90-44

Federal Acquisition Circular (FAC) 90-44 is issued under the authority of the Secretary of Defense, the

Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-44 is effective December 31, 1996 except the following items:

Items III, IV, and VIII, January 1, 1997; and  
Items V and VII, March 3, 1997.

Dated: December 19, 1996.

Roland A. Hassebrock,  
Col., USAF Acting Director, Defense Procurement.

Dated: December 18, 1996.

Ida M. Ustad,  
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 19, 1996.

Tom Luedtke,  
Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

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#### 48 CFR Parts 1 and 31

[FAC 90-44; FAR Case 96-010; Item I]

RIN 9000-AH41

#### Federal Acquisition Regulation; Automatic Data Processing Equipment Leasing Costs

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

**ACTION:** Interim rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule which deletes the definition of automatic data processing equipment (ADPE) and the cost principle concerning ADPE leasing costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** *Effective Date:* December 31, 1996.

*Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 3, 1997.

**ADDRESSES:** Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW, Room 4037, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: 96-010@www.ARNET.gov.

#### 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 90-44, FAR case 96-010.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The cost principle at FAR 31.205-2, Automatic Data Processing Equipment (ADPE) Leasing Costs, was implemented when ADPE was an emerging technology, had limited applications, and was a substantial cost element on Government contracts. For these early computer systems, the hardware itself constituted the major expense, and that fact, coupled with the risks of ownership of this rapidly evolving technology, justified the detailed scrutiny required under the cost principle. In the current technological environment, however, where hardware costs are no longer such a significant expense and computer systems have become ubiquitous in the workplace, the continued application of FAR 31.205-2 is no longer appropriate and is an unnecessary accounting and administrative burden on contractors. The cost principle at FAR 31.205-36, Rental Costs, adequately protects the Government's interests in this cost area without prescribing overly detailed annual requirements.

This interim rule deletes the cost principle at 31.205-2, the ADPE definition at 31.001, and references to the term "ADPE" found elsewhere in Part 31.

##### B. Regulatory Flexibility Act

The 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 use simplified acquisition procedures, or are awarded on a competitive, fixed-price basis, and do not require application of the FAR cost principles. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately

and cite 5 U.S.C. 601, *et seq.* (FAR case 96-010) in correspondence.

##### C. Paperwork Reduction Act

The interim rule deletes the information collection requirement at FAR 31.205-2, which was previously approved by the Office of Management and Budget (OMB) under Control Number 9000-0072.

##### 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, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. The rule is necessary because the cost principle at FAR 31.205-2 imposes unnecessary administrative and accounting requirements on contractors and the Government, since it requires contractors to annually demonstrate compliance with a number of specific criteria, including obtaining contracting officer approval in certain circumstances. In order for contractors, and ultimately, the Government, to experience cost savings as quickly as possible, it is necessary that an interim rule be published to eliminate this burdensome and obsolete requirement. 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 Parts 1 and 31

Government procurement.

Dated: December 19, 1996.  
Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 1 and 31 are amended as set forth below:

1. The authority citation for 48 CFR parts 1 and 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).

#### PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

##### 1.106 [Amended]

2. Section 1.106 is amended in the list following the introductory paragraph by removing the FAR segment "31.205-2" and the corresponding OMB control number "9000-0072".