

rule. All comments were considered in the development of the final rule.

**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 the rule primarily pertains to Government reporting requirements and merely requires offerors to provide certain identification information when responding to a solicitation.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act is deemed to apply because the final rule contains a new information collection requirement. Accordingly, a request for approval of a new information collection requirement has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a Federal Register notice published on January 16, 1997.

**List of Subjects in 48 CFR Parts 26 and 52**

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 26 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 26 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 26—OTHER SOCIOECONOMIC PROGRAMS**

2. Subpart 26.3, consisting of sections 26.300 through 26.304, is added to read as follows:

**Subpart 26.3—Historically Black Colleges and Universities and Minority Institutions**

- Sec.
- 26.300 Scope of subpart.
- 26.301 Definitions.
- 26.302 General policy.
- 26.303 Data collection and reporting requirements.
- 26.304 Solicitation provision.

**26.300 Scope of subpart.**

(a) This subpart implements Executive Order 12928 of September 16, 1994, which promotes participation of Historically Black Colleges and

Universities (HBCUs) and Minority Institutions (MIs) in Federal procurement.

(b) This subpart does not pertain to contracts performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

**26.301 Definitions.**

As used in this subpart—

*Historically Black College or University* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For DoD, NASA, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority Institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for the purpose of this subpart, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

**26.302 General policy.**

It is the policy of the Government to promote participation of HBCUs and MIs in Federal procurement.

**26.303 Data collection and reporting requirements.**

Executive Order 12928 requires periodic reporting to the President on the progress of departments and agencies in complying with the laws and requirements mentioned in the Executive order.

**26.304 Solicitation provision.**

The contracting officer shall insert the provision at 52.226-2, *Historically Black College or University and Minority Institution Representation*, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

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

3. Section 52.226-2 is added to read as follows:

**52.226-2 Historically Black College or University and Minority Institution Representation.**

As prescribed in 26.304, insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION REPRESENTATION (MAY 1997)

(a) *Definitions.* As used in this provision—*Historically Black College or University* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority Institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for the purpose of this provision, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

(b) *Representation.* The offeror represents that it—

is not a Historically Black College or University;

is not a Minority Institution.

(End of provision)

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAC 90-46; FAR Case 95-021; Item VIII]

RIN 9000-AH04

**Federal Acquisition Regulation; Allowability of Foreign Selling Costs**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the ceiling on allowable foreign selling 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 May 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 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 90-46, FAR case 95-021.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule revises FAR 31.205-38(c)(2) by removing the ceiling on allowable foreign selling costs. The rule also revises FAR 31.205-1, Public relations and advertising costs, by deleting reference to the ceiling limitation, and further revises FAR 31.205-38(c)(2) by deleting obsolete language. A proposed rule was published in the Federal Register at 61 FR 31800, June 20, 1996. The proposed rule retained an allowability ceiling but increased the threshold for its application from \$2.5 million to \$5.0 million.

Two sources submitted public comments in response to the proposed rule. All comments were considered in developing the final rule. The final rule removes the ceiling on allowable foreign selling costs in lieu of the proposed rule's doubling of the present threshold for its application, i.e., \$2.5 million to \$5.0 million. The final rule achieves a greater reduction in the administrative burden of contractors than would result from retaining a ceiling but doubling the threshold for its applicability. In addition, elimination of the allowability ceiling further promotes the Government's policy of stimulating the export of U.S. products.

**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 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. In addition, this rule applies to only those entities that incur foreign selling costs.

**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 collections of information from offerors, contractors, or members of the public which 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 31  
Government procurement.

Dated: March 7, 1997.  
Edward C. Loeb,  
*Director, Federal Acquisition Policy Division.*

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 31.205-1 is amended in paragraph (d)(2) by revising the second sentence to read as follows:

**31.205-1 Public relations and advertising costs.**

\* \* \* \* \*  
(d) \* \* \*  
(2) \* \* \* Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection.  
\* \* \*

3. Section 31.205-38 is amended by revising paragraph (c)(2) to read as follows:

**31.205-38 Selling costs.**

\* \* \* \* \*  
(c) \* \* \*  
(2) The costs of broadly targeted and direct selling efforts and market planning other than long-range, that are incurred in connection with a significant effort to promote export sales of products normally sold to the U.S. Government, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the U.S. Government provided the costs are allocable, reasonable, and otherwise allowable under this subpart 31.2.  
\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**  
[FAC 90-46; FAR Case 95-024; Item IX]  
RIN 9000-AH03

**Federal Acquisition Regulation; Independent Research and Development/Bid and Proposal Costs in Cooperative Arrangements**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit contractor contributions of independent research and development (IR&D) costs under NASA cooperative arrangements to be treated as allowable indirect costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATES:** Effective May 16, 1997.

**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 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-46, FAR case 95-024.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

NASA published a class deviation (final rule) in the Federal Register at 59 FR 46359, September 8, 1994. The class deviation eliminates the prohibition at FAR 31.205-18(e) against treatment of contractor IR&D contributions under NASA cooperative arrangements as allowable indirect costs. This final rule eliminates the need for the NASA class deviation.

A proposed rule was published in the Federal Register at 61 FR 31796, June 20, 1996. Two sources submitted public comments. All comments were considered in developing the final rule.

**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 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. In addition, this rule affects only those entities that perform independent research and development effort under NASA cooperative arrangements.