

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).  
[FR Doc. 99-24419 Filed 9-23-99; 8:45 am]  
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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 31

[FAC 97-14; FAR Case 98-006; Item XI]

RIN 9000-AI24

#### Federal Acquisition Regulation; Interest and Other Financial 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make minor changes to the cost principle concerning "interest and other financial costs."

**EFFECTIVE DATE:** November 23, 1999.

**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 Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-14, FAR case 98-006.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Councils published a proposed rule in the *Federal Register* on January 29, 1999 (64 FR 4760). The rule proposed amending FAR 31.205-20, Interest and Other Financial Costs, to add "interest charges and other amounts paid as a consequence of late contractor payments" to the list of unallowable costs. In addition, the rule proposed several minor revisions, including the deletion of "and directly associated costs." This phrase is unnecessary since FAR 31.201-6(a) indicates that when "an unallowable cost is incurred, its directly associated costs are also unallowable."

Fifteen respondents submitted public comments to the proposed rule. Many of the respondents expressed the following concerns:

- The ruling by the Court of Appeals for the Federal Circuit (*Lockheed Corporation v. Secretary of the Air Force*, 113 F.3d 1225 (Fed. Cir. 1997)) did not involve interest charges paid "as a consequence of late contractor payments," but rather as a consequence of an inadvertent tax deficiency.

- The term "late contractor payments" is overly broad and may result in confusion regarding interest allowability.

The rule is inequitable since it proposes to disallow Government reimbursement of interest costs incurred by a contractor for the underpayment of State taxes while FAR 31.201-5, Credits, requires the contractor to credit the Government the applicable portion of any State tax refunds it receives, together with interest.

- The rule incentivizes contractors to be overly conservative in computing State tax liability.

- The rule substantially increases administrative burdens on the Government and contractors.

While the Councils do not agree with all of the concerns expressed by the respondents, the Councils have decided not to add "interest charges and other amounts paid as a consequence of late contractor payments" to the list of unallowable costs in FAR 31.205-20, pending further study on the issue of interest allowability. Therefore, this final rule only makes minor changes to the interest cost principle.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget 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 only makes nonsubstantive changes to the cost principle concerning "interest and other financial costs." In addition, 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 cost principle contained in this rule.

##### 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 Part 31

Government procurement.

Dated: September 14, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR Part 31 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. Revise section 31.205-20 to read as follows:

##### 31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, and costs of preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 36, 44, 49, and 52

[FAC 97-14; FAR Case 97-043; Item XII]

RIN 9000-AI22

#### Federal Acquisition Regulation; Cost-Reimbursement Architect-Engineer Contracts

**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 provide guidance