

The proposed FAR rule also included proposed revisions to FAR 31.201-6, Accounting for unallowable costs. Due to significant changes made as a result of public comments received, the Councils have decided that the proposed revisions to FAR 31.201-6 will be published as a second proposed rule in a **Federal Register** notice under new FAR case 2004-006.

This is not a significant regulatory action and, therefore, was not subject to 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. Public Comments

There were no public comments received on section 31.204.

C. 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 cost principles and procedures discussed in this rule. For FY 2003, only 2.4 % of all contract actions were cost contracts awarded to small business.

D. 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: June 10, 2004.

Ralph J. De Stefano,

Acting Director, 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 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.204 in the first sentence of paragraph (a) by removing “shall be allowed” and adding “are

allowable” in its place; by revising paragraph (b); and by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

31.204 Application of principles and procedures.

* * * * *

(b)(1) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with this part:

(i) Cost-reimbursement.

(ii) Fixed-price incentive.

(iii) Price redeterminable (*i.e.*, fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(2) The requirements of paragraph (b)(1) of this section apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(c) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, for which subcontract cost analysis was performed are allowable if the price was negotiated in accordance with 31.102.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001-24; FAR Case 2002-008; Item IX]

RIN 9000-AJ69

Federal Acquisition Regulation; Gains and Losses, Maintenance and Repair Costs, and Material 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) by deleting the cost principle regarding maintenance and repair costs, and revising the cost principles regarding contingencies, material costs, and training and education costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The revisions are intended to amend the FAR regarding contract cost principles and procedures in light of the evolution of generally accepted accounting principles (GAAP), the advent of acquisition reform, and experience gained from implementation of the FAR regarding contract cost principles and procedures.

DATES: *Effective Date:* July 19, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501-0650. Please cite FAC 2001-24, FAR case 2002-008.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 40466, July 7, 2003, with request for comments. Three respondents submitted comments on the proposed FAR rule. A discussion of the comments related to FAR 31.205-24 and 31.205-26 are provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with minor changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Section B, Comment 2, below.

In addition to the above, the proposed FAR rule also included proposed revisions to FAR 31.205-16, Gains and losses on disposition or impairment of depreciable property or other capital assets. Due to significant changes made as a result of public comments received, the Councils have decided that the proposed revisions to the FAR 31.205-16 cost principle will be published as a second proposed rule in a **Federal Register** notice under FAR case 2004-005.

B. Public Comments

FAR 31.205-24, Maintenance and Repair Costs

1. *Comment:* The respondent agrees that the cost principle can be removed from the FAR.

Councils' response: Concur.

FAR 31.205–26, Material Costs

2. *Comment:* One respondent agreed with the deletion of the FAR 31.205–26 wording as proposed because generally accepted accounting principles (GAAP) adequately cover the topic. A second respondent was concerned with the deletions in paragraphs (a) and (c) that deal with the allowability of material costs and the allowability of reasonable adjustments between book and physical inventory. The second respondent was concerned that the part of the FAR that delineates allowable versus unallowable cost would omit these statements of material cost allowability; the respondent believes these statements should be retained to avoid confusion and disputes.

Councils' response: Partially concur. The Councils generally believe that affirmative statements of allowability are not value-added in a cost principle. For this reason, the Councils do not believe it is necessary to retain the last sentence in paragraph (a), which simply states that material costs are allowable subject to the requirements of paragraphs (b) through (e) of the cost principle. The Councils recognize that there are instances in which it is desirable to retain the coverage if users might apply another cost principle and improperly disallow a particular type of cost. However, the Councils do not believe this situation exists for FAR 31.205–26.

The current paragraph (c) requires that adjustments for differences in physical and book inventories relate to the period of contract performance. The Councils had recommended deleting this provision and, thereby, relying upon GAAP. However, based on the public input, it appears there are significant concerns that reliance solely upon GAAP could result in potential disputes. The Councils, therefore, now believe that the language in paragraph (c) should be retained. The Councils recognize that this provision provides protection to both the contractor and the Government by specifically permitting reasonable adjustments for inventory differences while also requiring that such adjustments relate to the period of contract performance.

3. *Comment:* A respondent noted that reference to FAR 31.205–26(e) in paragraph (k) of FAR 31.205–11, Depreciation, and in FAR 15.208, Submission, modification, revision, and withdrawal of proposals, needs to be revised to reflect the reordering and renumbering of the FAR 31.205–26 cost principle.

Councils' response: Since the Councils have reinstated paragraph (c),

as noted in the response to Comment 1, above, the original paragraph numbering for paragraph (e) is retained and there is no need to revise FAR 31.205–11 or FAR 15.208. Notwithstanding, the Councils note that paragraph (k) of FAR 31.205–11 was deleted by FAC 2001–18, dated December 11, 2003.

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to 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.

D. 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 cost principles and procedures discussed in this rule. For fiscal year 2003, only 2.4 percent of all contract actions were cost contracts awarded to small businesses.

E. 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: June 10, 2004.

Ralph J. De Stefano,

Acting Director, 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 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. In section 31.205–7, revise the last sentence in paragraph (c)(2) to read as follows:

31.205–7 Contingencies.

* * * * *

(c) * * *

(2) * * * (See, for example, 31.205–6(g) and 31.205–19.)

31.205–24 [Removed and Reserved]

■ 3. Remove and reserve section 31.205–24.

■ 4. Revise section 31.205–26 to read as follows:

31.205–26 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and in-transit insurance. In computing material costs, the contractor shall consider reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work).

(b) The contractor shall—

(1) Adjust the costs of material for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors; and

(2) Credit such income and other credits either directly to the cost of the material or allocate such income and other credits as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, the contractor does not need to credit lost discounts.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable.

(e) Allowance for all materials, supplies and services that are sold or transferred between any divisions, subdivisions, 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 price when—

(1) 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

(2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the contractor—

(1) Should adjust the price to reflect the quantities being acquired; and

(2) May adjust the price to reflect the actual cost of any modifications necessary because of contract requirements.

31.205-44 [Amended]

■ 5. Amend section 31.205-44 in paragraph (f) by removing “31.205-24.”

[FR Doc. 04-13626 Filed 6-17-04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 11 and 53

[FAC 2001-24; Item X]

Federal Acquisition Regulation; Technical Amendment

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update an address and remove the illustrations of Standard Forms 254 and 255 (which became obsolete on June 8, 2004) from the FAR.

DATES: *Effective Date:* June 18, 2004.

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. Please cite FAC 2001-24, Technical Amendments.

List of Subjects in 48 CFR Parts 8, 11 and 53

Government procurement.

Dated: June 10, 2004.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 11 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 11 and 53 is revised to read as follows:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

8.003 [Amended]

■ 2. Amend section 8.003 in paragraph (d) by removing from the address “Suite 4528” and adding “Suite 3229” in its place.

PART 11—DESCRIBING AGENCY NEEDS

11.102 [Amended]

■ 3. Amend section 11.102 by removing “DoD 4120.3-M” each time it appears and adding “DoD 4120.24-M” in its place.

11.202 [Amended]

■ 4. Amend section 11.202 in paragraph (b) by removing “DoD 4120.3-M” and adding “DoD 4120.24-M” in its place.

PART 53—FORMS

53.301-254 and 53.301-255 [Removed]

■ 5. Remove sections 53.301-254 and 53.301-255.

[FR Doc. 04-13627 Filed 6-17-04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-24 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

Interested parties may obtain further information regarding these rules by referring to FAC 2001-24 which precedes this document. These documents are also available via the Internet at <http://www.acqnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001-24

Item	Subject	FAR Case	Analyst
*I	Incentives for Use of Performance-Based Contracting for Services (Interim)	2004-004	Wise.
II	Definitions Clause	2002-013	Parnell.
III	Procurement Lists	2003-013	Nelson.
IV	Determining Official for Employment Provision Compliance—Immigration and Nationality Act (INA).	2004-009	Goral.
*V	Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs)	1999-603	Nelson.
VI	Designated Countries—New European Communities Member States	2004-008	Davis.
VII	Buy American Act—Nonavailable Articles	2003-007	Davis.
VIII	Application of Cost Principles and Procedures and Accounting for Unallowable Costs.	2002-006	Loeb.
IX	Gains and Losses, Maintenance and Repair Costs, and Material Costs	2002-008	Loeb.