

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31**

[FAR Case 95-024]

RIN 9000-AH03

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

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

ACTION: Proposed rule.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration are proposing to amend Federal Acquisition Regulation (FAR) Part 31 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. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95-024 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 FAR case 95-024.

SUPPLEMENTARY INFORMATION:**A. Background**

NASA published a class deviation (interim rule) in the May 2, 1994, Federal Register (59 FR 22521) with the final rule published in the September 8, 1994, Federal Register (59 FR 46359). 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 proposed FAR rule would eliminate the need for the NASA class deviation.

B. Regulatory Flexibility Act

This proposed 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 FAR case 95-024 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does 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: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be 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 31.205-18(e) is revised to read as follows:

**31.205-18 Independent research and
development and bid and proposal costs.**

* * * * *

(e) *Cooperative arrangements.* IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs may also include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under

(1) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));

(2) Sections 203(c) (5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c) (5) and (6));

(3) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency, or

(4) Other equivalent authority. IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

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