

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.

\* \* \* \* \*

[FR Doc. 97-6317 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P

#### 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.

**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 31.205–18(e) is revised to read as follows:

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

\* \* \* \* \*

(e) *Cooperative arrangements.* (1) 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 also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under—

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

(ii) 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));

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

(iv) Other equivalent authority.

(2) 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.

[FR Doc. 97–6318 Filed 3–14–97; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 32 and 52**

[FAC 90–46; FAR Case 91–091; Item X]

RIN 9000–AF61

**Federal Acquisition Regulation; Prompt Payment**

**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 incorporate changes required by the Prompt Payment Act Amendments of 1988. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** 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 91–091.

**SUPPLEMENTARY INFORMATION:****A. Background**

Federal Acquisition Circular (FAC) 84–45 contained a final rule which was published in the Federal Register at 54 FR 13332, March 31, 1989, to incorporate changes required by the Prompt Payment Act Amendments of 1988 (Public Law 100–496). OMB implemented the statutory requirements by revising OMB Circular A–125, Prompt Payment. The OMB Circular was published as a final rule in the Federal Register on December 21, 1989, and became effective 30 days after publication. OMB's final guidance differed somewhat from earlier proposed coverage which served as the basis for the FAR changes published in FAC 84–45. This final rule amends the FAR to reflect the changes in the OMB circular.

A proposed FAR rule to implement the guidance published in OMB Circular

A–125 (Revised) was published in the Federal Register at 59 FR 23776, May 6, 1994. Ten sources submitted public comments. These comments were considered in developing the final rule.

**B. Regulatory Flexibility Act**

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

The need for, and the objectives of, the final rule, are to implement changes made in Office of Management and Budget (OMB) Circular A–125 (Revised), dated December 12, 1989, to comply with the Prompt Payment Act Amendments of 1988 (Public Law 100–496). The Prompt Payment Act, as amended, requires Executive departments and agencies to make payments on time, to pay interest penalties when payments are late, and to take discounts only when payments are made on or before the discount date. We did not receive any public comments in response to the Initial Regulatory Flexibility Analysis. This rule will apply to all small entities that are awarded Government contracts, except contracts with payment terms and late payment penalties established by other Governmental authority (e.g., tariffs). The rule will also apply to all small entities that enter into construction contracts with contractors holding prime Federal construction contracts. To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule. The Federal Procurement Data System Federal Procurement Report for Fiscal Year (FY) 1995 states that 203,241 awards and contract modifications valued at more than \$25,000 were placed with small entities in FY 1995. However, information is not available as to the number of small entities that received these awards, the number of small entities that receive awards not subject to this rule, or the number of small entities that enter into construction contracts with contractors holding prime Federal construction contracts. The corresponding information for actions valued at \$25,000 or less is also not available. There are no significant alternatives that could accomplish the objectives of this rule.

**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 Parts 32 and 52

Government procurement.