

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 only affects acquisitions from prohibited sources.

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 Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 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).

PART 25—FOREIGN ACQUISITION

■ 2. Revise section 25.701 to read as follows:

25.701 Restrictions.

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.epls.gov/Terlist1.html>. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/ofac>.

25.702 [Amended]

■ 3. Amend section 25.702 by removing "622–2520" and adding "622–2490" in its place.

25.1103 [Amended]

■ 4. Amend section 25.1103 in paragraph (a) by removing "(see 25.701(a)(2))".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(24) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

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Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Oct. 2003)

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(b) * * *

(24) 52.225–13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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■ 6. Amend section 52.213–4 by revising paragraph (a)(1)(iv) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

(a) * * *

(1) * * *

(iv) 52.225–13, Restrictions on Certain Foreign Purchases (Oct. 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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■ 7. Amend section 52.225–13 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.225–13 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (Oct. 2003)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at

<http://www.epls.gov/Terlist1.html>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/ofac>.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001–16; FAR Case 2002–001; Item VIII]

RIN 9000–AJ46

Federal Acquisition Regulation; Economic Planning, Employee Morale, and Travel Cost Principles

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 revising three cost principles regarding economic planning costs; employee morale, health, welfare, food service, and dormitory costs and credits; and travel costs. The changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability.

DATES: *Effective Date:* October 31, 2003.

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 Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–16, FAR case 2002–001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55686, August 29, 2002, with request for comments. One respondent submitted comments; a discussion of the comments is provided below. Differences between the proposed rule and final rule are discussed in Section B, Comments 1 and 2, below.

FAR 31.205–12, Economic Planning Costs

Comment 1: Revise proposed FAR 31.205–12(a). The respondent agrees with the deletion of the current paragraphs (b) and (c). However, the respondent believes that by deleting the phrase “and that may take into account the eventual possibility of economic dislocation or fundamental alterations in those markets in which the contractor currently does business” from the first sentence in the current paragraph (a), the Councils may be unintentionally narrowing the allowability of economic planning costs. Specifically, the respondent stated that “costs associated with the generalized planning of possible divestitures may no longer be considered economic planning costs by auditors and ACOs but be considered unallowable organization costs instead.”

Councils’ response: Partially concur. It was not the Council’s intent to change the scope of this cost principle; the Councils simply concluded that the phrase in question was unnecessary. But, since industry believes its deletion would narrow the allowability of costs under this cost principle, the phrase is reinstated to the first sentence in paragraph (a). However, the Councils also want to go on record as not agreeing with the assertion that planning costs related to divestiture efforts are economic planning costs covered by this cost principle. Efforts by a contractor to analyze future market conditions and assess the impact of those conditions on its current organization are economic planning costs. Any efforts by a contractor to analyze, initiate, or change its current organization to meet future market conditions are organization or reorganization costs covered under FAR 31.205–27, Organization costs. Contractors’ general long-range planning efforts involving the contractor’s organization will need to be reviewed on a case-by-case basis.

Comment 2: Revise proposed FAR 31.205–12(a). The respondent believes that it is not necessary to include the words “determining the allowability of” in the last sentence of paragraph (a), since there is no determination to be made under FAR 31.205–38, Selling costs, regarding the allowability of other market planning costs.

Councils’ response: Concur. The Councils agree and have deleted the phrase from the last sentence in paragraph (a).

FAR 31.205–13, Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits

Comment 3: Delete proposed FAR 31.205–13(d). The respondent recommended the elimination of paragraph (d) regarding the cost allowability of food and dormitory services provided for employees. The respondent states that differing interpretations on how to apply the detailed provisions in paragraph (d) often occur. The respondent believes that the Government would still be adequately protected by FAR 31.201–3, Determining reasonableness, even if paragraph (d) is eliminated.

Councils’ response: Nonconcur. This section of the cost principle clarifying the allowability of dining facilities costs is statutorily required by 10 U.S.C. 2324 (f)(1)(G) and 41 U.S.C. 256 (f)(1)(G). In addition, while the respondent provided some examples where they believe subjective and interpretational differences may occur, they did not cite any specific cost principle language that is problematic. The Councils believe the current cost principle language provides adequate criteria for properly determining cost allowability in their examples.

FAR 31.205–46, Travel Costs

Comment 4: Revise proposed FAR 31.205–46. The respondent has no objection to the deletion of the current paragraphs (b) and (c) to remove duplicative coverage. However, the respondent believes this cost principle can be further streamlined by removing the existing per diem ceiling limitations on the costs incurred for lodging, meals, and incidentals by allowing reimbursement of such costs on a “reasonable charge” basis. The respondent pointed out its endorsement of the Government’s proposed rule associated with FAR case 1994–753, Travel Costs.

Councils’ response: Partially concur. The Councils agreed to delete paragraphs (b) and (c) to remove duplicative coverage.

The recommendation to remove the existing per diem ceiling limitations provided in paragraph (a)(2) for lodging, meals, and incidental expenses is outside the scope of this case. During the deliberations on FAR case 1994–753, Travel Costs, several respondents raised concerns over the potential for increased costs to the Government and potential inequities between the treatment of contractor travel costs and Federal employee travel costs. The FAR Council placed the case on hold in November 2001, pending resolution of

these concerns. The Councils have not identified procedures to mitigate the risks associated with the proposed change to the travel cost principle and are taking no further action on FAR case 1994–753.

General Reformatting of FAR 31.205

Comment 5: The respondent also recommended that the Councils consider a general reformatting of FAR part 31, Contract Cost Principles and Procedures. Specifically, consideration should be given to establishing a uniform structure for the selected costs detailed in FAR 31.205, which the respondent believes will increase the clarity and understanding of the cost principles and thereby reduce misinterpretation.

Councils’ response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to “force-fit” such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government’s interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date, including the recent major revisions to the relocation cost principle (FAR 31.205–35) that made employee “tax gross-ups” and spouse employment assistance payments allowable for the first time, as well as increased the maximum allowable lump-sum amount for miscellaneous expenses from \$1,000 to \$5,000. In addition, cost principle

streamlining cases are currently in process regarding compensation (FAR 31.205–6), training and education (FAR 31.205–44), selling (FAR 31.205–38), depreciation (FAR 31.205–11), and expanded relocation lump-sum (FAR 31.205–35). The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

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. 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 principle discussed 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 24, 2003.

Laura G. Auletta,

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).

31.205–6 [Amended]

■ 2. Amend section 31.205–6 in paragraph (m)(2) by removing “(see 31.205–46(f))” and adding “(see 31.205–46(d))” in its place.

■ 3. Revise section 31.205–12 to read as follows:

31.205–12 Economic planning costs.

Economic planning costs are the costs of general long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs are allowable. Economic planning costs do not include organization or reorganization costs covered by 31.205–27. See 31.205–38 for market planning costs other than economic planning costs.

■ 4. Amend section 31.205–13 by revising paragraphs (a), (d), and (f) to read as follows:

31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, subject to the limitations contained in this subsection. Some examples of allowable activities are—

- (1) House publications;
- (2) Health clinics;
- (3) Wellness/fitness centers;
- (4) Employee counseling services; and
- (5) Food and dormitory services for the contractor's employees at or near the contractor's facilities. These services include—

- (i) Operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations; and
- (ii) Similar types of services.

* * * * *

(d)(1) The allowability of food and dormitory losses are determined by the following factors:

- (i) Losses from operating food and dormitory services are allowable only if the contractor's objective is to operate such services on a break-even basis.
- (ii) Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the objective in paragraph (d)(1)(i) of this subsection are not allowable, except as described in paragraph (d)(1)(iii) of this subsection.

(iii) A loss may be allowed to the extent that the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or

prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. The following are examples of unusual circumstances:

(A) The contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available.

(B) The contractor's charged (but unproductive) labor costs would be excessive if the services were not available.

(C) If cessation or reduction of food or dormitory operations will not otherwise yield net cost savings.

(2) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

* * * * *

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, are allowable only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205–46 [Amended]

■ 5. Amend section 31.205–46 as follows:

■ a. Remove paragraphs (b) and (c), and redesignate paragraphs (d), (e), and (f) as (b), (c), and (d), respectively; and

■ b. In the introductory text of newly designated paragraph (c)(2), remove “paragraph (d)” each time it appears (twice) and add “paragraph (b)” in their place; and remove “subparagraph (e)(3)” and add “paragraph (c)(3)” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 24

[FAC 2001–16; Item IX]

Federal Acquisition Regulation; Technical Amendments

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