

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31****[FAR Case 2002–006]****RIN: 9000–AJ65****Federal Acquisition Regulation;
Application of Cost Principles and
Procedures and Accounting for
Unallowable Costs**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) sections relating to accounting for unallowable costs and application of cost principles and procedures.

DATES: Interested parties should submit comments in writing on or before July 21, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-006@gsa.gov.

Please submit comments only and cite FAR case 2002–006 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, 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 FAR case 2002–006.

SUPPLEMENTARY INFORMATION:**A. Background**

The DoD Director of Defense Procurement established a special interagency ad hoc committee to perform a comprehensive review of policies and procedures in FAR Part 31, Contract Cost Principles and Procedures, related to cost measurement, assignment, and allocation to evaluate the need for each specific requirement in light of the evolution of generally accepted

accounting principles and experience gained from implementation.

The Director of Defense Procurement announced a series of public meetings in the **Federal Register** at 66 FR 13712, March 7, 2001 (with a “correction to notice” published in the **Federal Register** at 66 FR 16186, March 23, 2001). Attendees at the public meetings (held on April 19, 2001, May 10–11, 2001, and June 12, 2001) included representatives from industry, Government, and other interested parties who provided views on potential areas for revision in FAR part 31. The ad hoc committee reviewed the cost principles and procedures and the public comments; identified potential changes to the FAR; and submitted several reports, including draft proposed rules for consideration by the Councils.

The Councils have reviewed the reports related to FAR 31.201–6, Accounting for unallowable costs, and FAR 31.204, Application of principles and procedures, and propose the following revisions:

- Add paragraph (c)(2) to FAR 31.201–6 to provide specific criteria on the use of sampling as a method to identify unallowable costs and the acceptability of contractor sampling methods.
 - Revise the current paragraph (b) of FAR 31.204, which addresses the allowability of subcontract costs, to clarify the language.
 - Make a number of editorial changes.
- 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 Councils do not expect this proposed rule 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 use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principles and procedures that are discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 601, *et seq.* (FAR case 2002–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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: May 16, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 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. Revise section 31.201–6 to read as follows:

31.201–6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost that is generated solely as a result of incurring another cost, and that would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) Costs that specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for accounting and