

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 15 and 31****[FAR Case 2002-008]****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:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by deleting the cost principle regarding maintenance and repair costs, revising the cost principles regarding gains and losses on disposition or impairment of depreciable property or other capital assets, and by revising the language concerning material costs.

**DATES:** Interested parties should submit comments in writing on or before September 5, 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.2002-008@gsa.gov](mailto:farcase.2002-008@gsa.gov).

Please submit comments only and cite FAR case 2002-008 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 Edward Loeb, Procurement Analyst, at (202) 501-0650. Please cite FAR case 2002-008.

**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, relating to cost measurement, assignment, and

allocation. The Director announced a series of public meetings in the **Federal Register** notice 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 reviewed the reports related to FAR 31.205–16, Gains and losses on disposition or impairment of depreciable property or other capital assets, FAR 31.205–24, Maintenance and repair costs, and FAR 31.205–26, Material costs, and proposed the following revisions:

1. *FAR 31.205–16.* Add a new paragraph (b) that addresses the method and timing for determining the gain and loss associated with a sale and leaseback arrangement. The Councils believe that (a) a contractor should not benefit or be penalized for entering into a sale and leaseback arrangement; (b) the Government should reimburse the contractor the same amount for the subject asset as if the contractor had retained title; and (c) the Government would be precluded from recovering the financing costs that were imbedded in the sales price should the gain be recognized at the date of the sale and leaseback arrangement. For these reasons, the Councils are recommending that the gain or loss be determined at the end of the lease term or when the contractor no longer occupies the property (whichever date is later), rather than the date of the sale and leaseback arrangement. Implementation of adequate agency guidance and tracking controls (*e.g.*, maintenance of permanent files on contractors by auditors) should assure that the Government properly computes its share of the gain or loss at the date of disposition.

The Councils do not believe the impairment language currently in paragraph (f) of the cost principle should be revised because 48 CFR 9904.404—Capitalization of Tangible Assets, and 48 CFR 9904.409—Cost Accounting Standard—Depreciation of Tangible Capital Assets, do not address the issue of asset impairments.

2. *FAR 31.205–24.* Delete this cost principle which addresses the

assignment of maintenance and repair costs to cost accounting periods. The Councils believe that 48 CFR 9904—Cost Accounting Standards adequately addresses these costs for contracts subject to full CAS coverage. For business units with no contracts subject to full CAS coverage, Generally Accepted Accounting Principles (GAAP) would apply to all of the contracts in the business unit subject to FAR Part 31. GAAP, which include criteria for determining whether a cost should be expensed or capitalized, adequately address this issue. For business units that have contracts subject to full CAS coverage and contracts that are not, the contractor would be required to apply a method that was consistent with GAAP for the contracts that are not subject to full CAS coverage (this method could be the same as the method used by the business unit for contracts subject to full CAS coverage).

3. *FAR 31.205–26.* Delete the current paragraph (c) and the last sentence of the current paragraph (d). Paragraph (c) requires that adjustments for differences in physical and book inventories relate to the period of contract performance. The Councils recommend deleting this provision, and, thereby, relying upon GAAP.

The Councils also recommend deleting the last sentence of the current paragraph (d). This sentence provides specific methods for estimating material costs. Since FAR 31 focuses on criteria regarding the allowability of costs rather than the methods used to estimate costs, this sentence has been deleted.

4. Make related 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 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