

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2 and 31****[FAR Case 2001-034]****RIN 9000-AJ60****Federal Acquisition Regulation;
General Provisions of the Cost
Principles**

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 general provisions of the cost principles contained in the Federal Acquisition Regulation (FAR).

DATES: Interested parties should submit comments in writing on or before April 7, 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.2001-034@gsa.gov. Please submit comments only and cite FAR case 2001-034 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. Ralph De Stefano at (202) 501-1758. Please cite FAR case 2001-034.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils have performed an analysis of the general provisions at FAR 31.106-2, Exceptions to general rule on allowability and allocability; FAR 31.201-1, Composition of total cost; FAR 31.201-2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs, and propose the following revisions:

1. *FAR 31.106-2.* When the contractor's usual method of allocating indirect costs to a facilities contract will

yield inequitable results, the current language at paragraph (b) requires a contractor to vary its usual method and make appropriate adjustments to the indirect cost pool and base. This requirement is intended to provide the special treatment needed to produce an equitable allocation of cost to applicable facilities contracts. Although FAR 31.106-2 requires appropriate adjustments to the indirect cost pool and base, this subsection does not provide sufficient detail as to how the contractor must make the adjustment.

Therefore, the Councils propose to amend this subsection to explicitly recognize the concept of special allocations for application to facilities contracts that are not subject to full Cost Accounting Standards (CAS) coverage. The CAS provide for special allocations in 48 CFR 9904.403—Allocation of Home Office Expenses in Segments (CAS 403), 48 CFR 9904.410—Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (CAS 410), 48 CFR 9904.418—Allocation of Direct and Indirect costs (CAS 418), and 48 CFR 9904.420—Accounting for Independent Research and Development Costs and Bid and Proposal Costs (CAS 420). The proposed special allocation provisions provide the treatment that the contractor must use to produce an equitable allocation to applicable facilities contracts.

In addition, proposed language has been added to provide the specific methodology to be used when employing the concept of a special allocation. In conjunction with these changes, the Councils propose a new title, "Special allocations," which is more descriptive of the revised subsection.

2. *FAR 31.201-1.* This subsection was revised to delete unnecessary language that is adequately addressed elsewhere in the FAR, CAS, or generally accepted accounting principles (GAAP).

3. *FAR 31.201-2.* The rule revises paragraph (a) to clarify that costs must meet all five requirements in order to be reimbursable by the Government.

4. *FAR 31.202.* The rule adds a definition in FAR Part 2 for direct costs that is virtually identical to the definition at 48 CFR 9904.418-30(a)(2). Consequently, language in FAR Part 31 that duplicates the language in the new definition has been removed from paragraph 31.203(a).

5. *FAR 31.203.* The proposed rule removes the reference to CAS and GAAP since the subject matter is adequately addressed in FAR 31.201-2. The rule revises paragraph (e) of 31.203 to recognize that a transition period

longer or shorter than 12 months may be appropriate in special circumstances. The rule revises paragraphs (c) and (f) to include the concept of a special allocation contained in CAS 403, 410, 418, and 420, since the Councils recognize there are other special situations, in addition to Government-owned contractor-operated facilities, in which the contractor's established accounting practices may not yield an equitable allocation to a particular intermediate or final cost objective. The proposed special allocation provisions provide the treatment that the contractor must use to produce an equitable allocation in these special situations, including the specific methodology for adjusting the indirect cost pool and its applicable allocation base.

6. *Other editorial changes.* The rule makes other editorial changes, including revising the definition of "indirect cost" in FAR 2.101, changing the term "distributing" to "allocating," and changing the phrase "several cost objectives" to "intermediate or final cost objectives" to be consistent with the terminology used in CAS and FAR Part 31.

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 general provisions relating to cost principles 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 Parts 2 and 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 2001-034), 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