

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15, 31, and 42

Government procurement.

Dated: November 21, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 15, 31, and 42 as set forth below:

1. The authority citation for 48 CFR parts 15, 31, and 42 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 15—CONTRACTING BY NEGOTIATION

2. Amend section 15.404–1 by revising paragraph (c)(2)(iv) to read as follows:

15.404–1 Proposal analysis techniques.

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(c) * * *

(2) * * *

(iv) When applicable, verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in part 31 and the requirements and procedures in 48 CFR Chapter 99 (Appendix to the FAR looseleaf edition), Cost Accounting Standards.

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PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Amend section 31.000 by revising paragraph (a) to read as follows:

31.000 Scope of part.

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(a) The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (*see* 15.404–1(c)), except contracts, subcontracts, and modifications issued on a fixed-price basis where cost or pricing data is not obtained; and

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4. Amend section 31.001 by adding, in alphabetical order, the definition “Fixed-price contracts, subcontracts, and modifications” to read as follows:

31.001 Definitions.

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Fixed-price contracts, subcontracts, and modifications means—

(1) Fixed-price contracts, subcontracts, and modifications described at 16.202, 16.203 (except 16.203–1(b)) and 16.207;

(2) Fixed-price incentive contracts, subcontracts, and modifications where the price is not adjusted based on actual costs incurred (Subpart 16.4);

(3) The fixed hourly rate portion of time-and-materials and labor-hour contracts, subcontracts, and modifications where the rate is not adjusted based on actual costs incurred (Subpart 16.6); and

(4) Orders issued under indefinite-delivery contracts (Subpart 16.5) using one of the contract types in paragraphs (1) through (3) of this definition.

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5. Revise section 31.102 to read as follows:

31.102 Fixed-price contracts.

(a) The applicable subparts of part 31 shall be used in the pricing of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts when—

(1) Cost analysis is performed, except contracts, subcontracts, and modifications issued on a fixed-price basis where cost or pricing data is not obtained; or

(2) A fixed-price contract clause requires the determination or negotiation of costs.

(b) Application of cost principles to fixed-price contracts and subcontracts must not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price.

(c) Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

6. Amend section 31.103 by revising paragraph (a) to read as follows:

31.103 Contracts with commercial organizations.

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(a) The cost principles and procedures in Subpart 31.2 and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts, subcontracts, and contract modifications with commercial organizations whenever cost analysis is performed (*see* 15.404–1(c)), except contracts, subcontracts, and modifications issued

on a fixed-price basis where cost or pricing data is not obtained.

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7. Amend section 31.105 by revising paragraph (b) to read as follows:

31.105 Construction and architect-engineer contracts.

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(b) Except as otherwise provided in paragraph (d) of this section, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts, subcontracts, and contract modifications in this category if cost analysis is performed (*see* 15.404–1(c)), except contracts, subcontracts, and modifications issued on a fixed-price basis where cost or pricing data is not obtained.

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8. Amend section 31.106–1 by revising the third sentence of the introductory paragraph to read as follows:

31.106–1 Applicable cost principles.

* * * * * Whichever cost principles are appropriate will be used in the pricing of facilities contracts, subcontracts, and contract modifications in this category if cost analysis is performed (*see* 15.404–1(c)), except contracts, subcontracts, and modifications issued on a fixed-price basis where cost or pricing data is not obtained. * * *

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PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

9. Amend section 42.709 by revising paragraph (b) to read as follows:

42.709 Scope.

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(b) This section applies to contracts in excess of \$550,000, except fixed-price contracts without cost incentives.

10. Amend section 42.709–6 by revising the first sentence to read as follows:

42.709–6 Contract clause.

Insert the clause at 52.242–3, Penalties for Unallowable Costs, in solicitations and contracts over \$550,000, except fixed-price contracts without cost incentives. * * *

[FR Doc. 03–29640 Filed 11–26–03; 8:45 am]

BILLING CODE 6820–EP–P