

amending the Federal Acquisition Regulation (FAR) to revise the insurance and indemnification cost principle, and the portion of the compensation for personal services cost principle relating to pension costs. The rule revises both cost principles by improving clarity and structure and removing unnecessary and duplicative language. The revisions are intended to revise contract cost principles and procedures, in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation pertaining to contract cost principles and procedures.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501-0650. Please cite FAC 2001-18, FAR case 2001-037.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4880, January 30, 2003, with a request for comments. Four respondents submitted comments. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed below:

B. Public Comments

General Reformatting of FAR 31.205

Comment 1: In addition to specific comments regarding the subject case, a respondent also recommended reformatting this cost principle as part of a general reformat effort of FAR Part 31, Contract Cost Principles and Procedures. The respondent advocates establishing a common format for the selected costs detailed in FAR 31.205 will increase the clarity of the cost principles and 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. 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.

Incorporating CAS Provisions in FAR Cost Principles

Comment 2: A respondent asserted that the proposed rule incorporates substantial cost accounting standard (CAS) provisions into the FAR cost principles. The respondent believes this creates *de facto* CAS coverage when, by law, promulgations covering the measurement, assignment, and allocation of costs to cost objectives is assigned to the CAS Board, including the thresholds for which contracts will and will not include CAS provisions. The respondent further states that if the FAR includes CAS concepts, the inclusion should be done using direct quotes or references.

Councils' response: Nonconcur. The Councils considered this proposal, but believe that eliminating all CAS from the FAR would create significant problems.

It is the responsibility of the Councils, not the CAS Board, to promulgate rules for the measurement, assignment, and allocation of costs for non-CAS covered contracts. The CAS Board does not have jurisdiction over non-CAS covered contracts. For some costs, particularly deferred compensation including pension costs (CAS 412, 413, and 415), cost of money (CAS 414/417), and self-insurance (CAS 416), the Councils have chosen to use the same requirements for non-CAS covered contracts as the CAS

Board has chosen to use for CAS-covered contracts. To eliminate all CAS from the FAR would require removal of these key FAR Part 31 provisions.

As for the subject rule, the issue of an alternative to CAS 412/413 for non-CAS covered contracts was discussed at the public meetings during the spring of 2001. None of the attendees proposed an alternative to the use of CAS 412/413. In fact, most of the attendees supported the application of CAS 412/413 to non-CAS covered contracts. As such, the Councils do not believe there is currently a viable alternative to applying CAS 412/413 to non-CAS covered contracts.

In regard to CAS 416, the proposed rule included the CAS requirements for self-insurance. Without this provision, insurance costs for non-CAS covered contracts would be subject to Generally Accepted Accounting Principles (GAAP), which do not permit a self-insurance charge. The Councils believe it would be inequitable to permit contractors with CAS-covered contracts to charge self-insurance costs while denying such charges for contractors with non-CAS covered contracts. In addition, a contractor with both CAS and non-CAS covered contracts would need two sets of accounting practices if it wanted to charge self-insurance for CAS-covered contracts. Such a requirement would result in an unnecessary administrative burden to both the contractor and the Government.

As for the incorporation of the CAS provisions into the FAR, the respondent did not specify any particular language that it believes has been paraphrased. Nevertheless, the Councils reviewed the proposed rule to see if any such paraphrasing existed and found that the proposed rule references the specific CAS standards (412, 413, and 416); it does not paraphrase any CAS requirements.

FAR 31.205-6—Compensation for Personal Services

FAR 31.205-6(j)—Definition of Pension Plan

Comment 3: A respondent recommends that the current language at FAR 31.205-6(j)(1) be retained and asserts that the current language includes allowability criteria that would be eliminated if the definition is removed. The language currently reads as follows:

(1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees *may be treated as*