

for situations involving use of a patent without authorization from the patent holder. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 95-308.

SUPPLEMENTARY INFORMATION:

A. Background

The Uruguay Round of the Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade (GATT) resulted in the "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations; Agreement Establishing the World Trade Organization; Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods." Articles 30 and 31 thereof contain requirements related to use of a patent without authorization from the patent holder, including use by the Government. The rule advises contracting officers to consult with legal counsel in such situations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-40, FAR case 95-308), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 27

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 27 is amended as set forth below:

PART 27—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for 48 CFR Part 27 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 27.209 is added to read as follows:

27.209 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

(a) Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization from the patent holder, including use by the Government.

(b) The contracting officer should consult with legal counsel regarding questions under this section.

[FR Doc. 96-18507 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 52, and 53

[FAC 90-40; FAR Case 91-027; Item XI]

RIN 9000-AE47

Federal Acquisition Regulation; Performance and Payment Bonds

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to a final rule amending the Federal Acquisition Regulation (FAR) to further standardize policies governing bonding. Two new standard clauses are added for use when performance or payment bonds are required, and a new Standard Form 1418, Performance and Payment Bonds—Other Than Construction, is added. This regulatory action was not

subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR Case 91-027.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 28.101-1, 28.101-2, 28.101-3, 28.102-3, 28.103-2, 28.103-3, 28.103-4, 28.106-1, 28.106-2, 28.106-3, 52.228-1, and 53.228 are revised, and two new clauses are added, 52.228-15, Performance and Payment Bonds—Construction, and 52.228-16, Performance and Payment Bonds Other Than Construction, to further standardize policies governing bonding. A proposed rule was published in the Federal Register at 56 FR 31278, July 9, 1991.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 the rule merely updates, clarifies, and standardizes policy pertaining to performance and payment bonds.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of an extension of an information collection requirement concerning Office of Management and Budget (OMB) Control Number 9000-0119, Performance and Payment Bonds, was submitted to OMB under 44 U.S.C. 3501, *et seq.*, and approved through May 31, 1999. Public comments were invited through a subsequent Federal Register notice published at 61 FR 19664, April 12, 1996.

List of Subjects in 48 CFR Parts 28, 52, and 53

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 28, 52, 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.101-1 is amended by revising paragraph (c) to read as follows:

28.101-1 Policy on use.

* * * * *

(c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition (e.g., overseas construction, emergency acquisitions, sole-source contracts). Class waivers may be authorized by the agency head or designee.

3. Section 28.101-2 is revised to read as follows:

28.101-2 Solicitation provision or contract clause.

(a) The contracting officer shall insert a provision or clause substantially the same as the provision at 52.228-1, Bid Guarantee, in solicitations or contracts that require a bid guarantee or similar guarantee. For example, the contracting officer may modify this provision—

(1) To set a period of time that is other than 10 days for the return of executed bonds;

(2) For use in connection with construction solicitations when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101-1(b);

(3) For use in solicitations for negotiated contracts; or

(4) For use in service contracts containing options for extended performance.

(b) The contracting officer shall determine the amount of the bid guarantee for insertion in the provision at 52.228-1 (see 28.102-2(c)). The amount shall be adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed \$3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 [Removed and reserved]

4. Section 28.101-3 is removed and reserved.

5. Section 28.102-3 is amended by revising paragraph (a) to read as follows:

28.102-3 Solicitation requirements and contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 52.228-15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed \$100,000. The penal amount of the performance bonds may be decreased in accordance with 28.102-2(a). Where the provision at 52.228-1 is not included in the solicitation, the contracting officer shall set a period of time for return of executed bonds.

* * * * *

28.103-2 [Amended]

6. Section 28.103-2 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively.

28.103-3 [Amended]

7. Section 28.103-3 is amended by removing paragraphs (b) and (c) and redesignating paragraph (d) as (b).

8. Section 28.103-4 is added to read as follows:

28.103-4 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.228-16, Performance and Payment Bonds—Other than Construction, in solicitations and contracts that contain a requirement for both payment and performance bonds. The contracting officer shall determine the amount of each bond for insertion in the clause. The amount shall be adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for return of executed bonds. Alternate I shall be used when only performance bonds are required.

9. Section 28.106-1 is amended by revising paragraphs (c) and (m); redesignating paragraphs (n) and (o) as (o) and (p) and adding a new paragraph (n) to read as follows:

28.106-1 Bonds and bond related forms.

* * * * *

(c) SF 25-A, Payment Bond (see 28.102-1 and 28.106-3(b)).

* * * * *

(m) SF 1416, Payment Bond for Other Than Construction Contracts (see 28.103-3 and 28.106-3(b)).

(n) SF 1418, Performance Bond for Other Than Construction Contracts (see 28.103-2 and 28.106-3(b)).

* * * * *

10. Section 28.106-2 is amended by revising paragraph (a) to read as follows:

28.106-2 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.

* * * * *

11. Section 28.106-3 is amended by revising paragraph (b) to read as follows:

28.106-3 Additional bond or security.

* * * * *

(b) When additional coverage is furnished in whole or in part by a new surety, agencies shall use Standard Form 25, Performance Bond; Standard Form 1418, Performance Bond for Other Than Construction Contracts; Standard Form 25-A, Payment Bond; or Standard Form 1416, Payment Bond for Other Than Construction Contracts.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.228-1 is revised to read as follows:

52.228-1 Bid Guarantee.

As prescribed in 28.101-2, insert a provision or clause substantially as follows:

Bid Guarantee (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be _____ percent of the bid price or \$_____, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after

receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of provision)

13.–15. Sections 52.228–15 and 52.228–16 are added to read as follows:

52.228–15 Performance and Payment Bonds—Construction.

As prescribed in 28.102–3(a), insert a clause substantially as follows:

Performance and Payment Bonds—Construction (SEP 1996)

(a) *Definitions.* As used in this clause—

Contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) Unless the resulting contract price is \$100,000 or less, the successful offeror shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance Bonds (Standard Form 25):* (i) The penal amount of performance bonds shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(2) *Payment Bonds (Standard Form 25–A):*

(i) The penal amount of payment bonds shall equal—

(A) 50 percent of the contract price if the contract price is not more than \$1 million;

(B) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(C) \$2.5 million if the contract price is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of subparagraph (b)(2)(i) of this clause.

(iii) The Government may secure additional protection by directing the

Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

52.228–16 Performance and Payment Bonds—Other Than Construction.

As prescribed in 28.103–4, insert a clause substantially as follows:

Performance and Payment Bonds—Other than construction (SEP 1996)

(a) *Definitions.* As used in this clause—

Contract price means the total amount of the contract for the term of the contract (excluding options, if any) or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond (Standard Form 1416) in an amount equal to _____ percent of the contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

(d) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

Alternate I (SEP 1996). As prescribed in 28.103–4, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the contract price.

PART 53—FORMS

16. Section 53.228 is amended by revising paragraph (c); by redesignating paragraphs (n) and (o) as (o) and (p) and adding a new paragraph (n); in the newly designated paragraph (o) by removing the reference “28.106–1(n)” and inserting “28.106–1(o)” and in the newly designated paragraph (p) by removing the reference “28.106–1(o)” and inserting “28.106–1(p)” in its place. The revised text reads as follows:

53.228 Bonds and insurance.

* * * * *

(c) *SF 25–A (REV. 1/90), Payment Bond.* (See 28.106–1(c).)

* * * * *

(n) *SF 1418 (10/93 Ed.), Performance Bond for Other Than Construction Contracts.* (See 28.106–1(n).)

* * * * *

53.301–1418 [Added]

17. Standard Form 1418 is added to read as follows:

53.301–1418 Performance Bond for Other Than Construction Contracts.

BILLING CODE 6820–EP–P

PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS <i>(See instructions on reverse)</i>		DATE BOND EXECUTED <i>(Must be same or later than date of contract or option)</i>		OMB No.: 9000-0119 Expires: 05/31/99		
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Acquisition Policy Division (MVR), GSA, Washington, D.C. 20405.						
PRINCIPAL <i>(Legal name and business address)</i>			TYPE OF ORGANIZATION <i>("X" one)</i>			
			<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION			
SURETY(IES) <i>(Name(s) and business address(es))</i>			STATE OF INCORPORATION			
			PENAL SUM OF BOND <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">MILLION(S)</td> <td style="width: 25%;">THOUSAND(S)</td> <td style="width: 25%;">HUNDRED(S)</td> <td style="width: 25%;">CENTS</td> </tr> </table>			MILLION(S)
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS			
			CONTRACT DATE		CONTRACT NO.	
			OPTION DATE		OPTION NO.	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during either the base term or an option term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) is waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

The failure of a surety to renew a bond for any option term shall not result in a default of any bond previously furnished covering any base or option term.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL						
SIGNATURE(S)	1.		2.		Corporate Seal	
		<i>(Seal)</i>		<i>(Seal)</i>		
NAME(S) & TITLES(S) <i>(Typed)</i>	1.		2.			
INDIVIDUAL SURETY(IES)						
SIGNATURE(S)	1.		2.			
		<i>(Seal)</i>		<i>(Seal)</i>		
NAME(S) <i>(Typed)</i>	1.		2.			
CORPORATE SURETY(IES)						
S U R E T Y A	NAME & ADDRESS	1.		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.		2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.		2.		

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1418 (REV. 8-96)
Prescribed by GSA-FAR (48 CFR) 53.228(n)

CORPORATE SURETY(IES) (Continued)					
S U R E T Y A	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
S U R E T Y B	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
S U R E T Y C	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
S U R E T Y D	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
S U R E T Y E	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
S U R E T Y F	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
S U R E T Y G	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM	RATE PER THOUSAND \$	TOTAL \$
---------------------	-------------------------	-------------

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. Unless otherwise specified, the bond shall be submitted to the contracting office that awarded the contract.

[FR Doc. 96-18508 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31****[FAC 90-40; FAR Case 93-005; Item XII]****RIN 9000-AF97****Federal Acquisition Regulation;
Employee Compensation Costs**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the regulations concerning the allowability of personal services compensation costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 93-005.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR 31.001, Definitions, and 31.205-6, Compensation for personal services. The Defense Contract Audit Agency has raised concerns that the language in FAR 31.205-6(b) may be susceptible to differing interpretations and that the FAR does not provide adequate guidance with regard to contractor compensation systems. This final rule adds definitions at FAR 31.001; clarifies the standard for reasonableness of labor-management compensation agreements at FAR 31.205-6 (b) and (c); removes the examples from FAR 31.205-6(b); revises FAR 31.205-6(b)(1)(i) to clearly allow offsets of allowable elements of

employees' compensation packages among jobs of the same pay grade or level; and revises FAR 31.205-6(i) to provide a general allowability rule. This final rule also makes editorial changes and adds clarifying language. Most notable of these changes is the redesignation of FAR 31.205-6(f)(2) to a restructured and renamed 31.205-6(d) to improve the flow of the cost principle and provide a more logical placement of the language.

A proposed rule was published in the Federal Register at 59 FR 51399, October 11, 1994, with corrections published at 59 FR 60686, November 25, 1994. Eighteen comments were received in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 businesses are awarded on a competitive, fixed-price basis and do not require application of the FAR cost principles.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST
PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.001 is amended by adding, in alphabetical order, the definitions of "Job", "Job class of employees", and "Labor market" to read as follows:

31.001 Definitions.

* * * * *

Job, as used in this part, means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level—as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

Job class of employees, as used in this part, means employees performing in positions within the same job.

* * * * *

Labor market, as used in this part, means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors:

- (1) Geography,
- (2) Education and/or technical background required,
- (3) Experience required by the job,
- (4) Licensing or certification requirements,
- (5) Occupational membership, and
- (6) Industry.

* * * * *

3. Section 31.205-6 is amended-

a. By revising the introductory text of paragraph (a) and (a)(1);

b. In paragraph (a)(5) by removing the parenthetical at the end of the paragraph;

c. By adding introductory text to paragraph (b) and revising paragraph (b)(1);

d. By revising the introductory text of paragraph (c);

e. By revising paragraph (d);

f. By removing paragraph (f)(2) and redesignating (f)(3) as (f)(2); and

g. By revising paragraph (i).

The revised text reads as follows:

31.205-6 Compensation for personal services.

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for in other paragraphs of this subsection). It includes, but is not