

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31**

[FAR Case 92-613]

RIN 9000-AG85

**Federal Acquisition Regulation;
Contractor Overhead Certification**

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 (CAAC) and the Defense Acquisition Regulations Council (DARC) are considering revisions to the Federal Acquisition Regulation to clarify the allowability of certain costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before May 28, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat, (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 92-613 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. 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; telephone: (202) 501-4755. Please cite FAR case 92-613.

SUPPLEMENTARY INFORMATION:**A. Background**

The General Accounting Office (GAO), in its report GAO/NSIAD-93-79, "CONTRACT PRICING: Unallowable

Costs Charged to Defense Contracts," dated November 20, 1992, reported many instances where contractors had proposed costs for gifts and entertainment that appeared to be questionable. Some of those costs appeared to be unallowable under the existing cost principles and others, while not specifically unallowable, appeared to be unreasonable. GAO recommended that FAR 31.205-1, 31-205-13, and 31.205-14 be revised to eliminate confusion as to which cost principle was controlling. The December 1992 OMB SWAT summary report on civilian agency contracting practices also recommended these cost principles be made more explicit.

This proposed rule removes from paragraph (f)(5) of the cost principle at FAR 31.205-1, Public relations and advertising costs, the parenthetical reference to other cost principles to eliminate any confusion as to which cost principle governs. Other recommendations made by GAO and the OMB SWAT concerning further revisions to the cost principles have now been overtaken by the implementation of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355. These include revisions to FAR 31.205-13 and 31.205-14, which were published as final in the Federal Register at 60 FR 42648, August 16, 1995, under FAR Case 94-750, Entertainment, Gift, and Recreation Costs for Contractor Employees. FAR Case 94-750 implements section 2192 of FASA. Revisions to FAR Parts 42 and 52, requiring contractors to certify that indirect cost rate proposals do not contain unallowable costs, were published as a final rule in the Federal Register at 60 FR 42663, August 16, 1995, under FAR Case 94-752, Contractor Overhead Certification, which implements section 2151 of FASA.

B. Regulatory Flexibility Act

This proposed rule is not expected 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 businesses are awarded through sealed bidding on a firm fixed-price basis. The cost principles apply only where contracts are based on cost or pricing data. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*, (FAR case 92-613), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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.* 5 CFR 1320.7(j)(1) provides an exclusion for certifications when they entail no burden other than necessary to identify the respondent, the date, the respondent's address and the nature of the instrument.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: March 25, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

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

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

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

31.205-1 [Amended]

2. Section 31.205-1(f)(5) is amended by removing the parenthetical.

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