

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

[FAC 90-37; FAR Case 92-604; Item XIV]

RIN 9000-AF85

**Federal Acquisition Regulation;
Nonallowability of Excise Taxes on
Nondeductible Contributions to
Deferred Compensation Plans**

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 to amend the Federal Acquisition Regulation (FAR) by revising the cost principle concerning taxes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

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 (202) 501-4755. Please cite FAC 90-37, FAR case 92-604.

SUPPLEMENTARY INFORMATION:**A. Background**

Under the current FAR 31.205-41(b)(6), excise taxes on accumulated funding deficiencies or prohibited transactions involving employee deferred compensation plans pursuant to sections 4971 and 4975 of the Internal Revenue Code of 1954, as amended, are unallowable. This reflects a long-standing Government policy that punitive-type excise taxes are not reimbursable costs on Government contracts. Over the years, subsequent legislation has added several new excise taxes to subtitle D, chapter 43 of the Internal Revenue Service Code such that the Code currently lists 13 such taxes. The Councils have agreed that it is appropriate to revise FAR 31.205-41(b)(6) to insert a general prohibition on all excise taxes found at subtitle D, chapter 43 of the Internal Revenue Service Code. Such a general

prohibition will ensure that future legislative changes to subtitle D, chapter 43 of the Internal Revenue Code will be automatically reflected in the cost principle.

A proposed rule was published in the Federal Register at 59 FR 16393, April 6, 1994, with a request for comments. Three responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

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 55 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

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 31.205-41 is amended by revising paragraph (b)(6) to read as follows:

31.205-41 Taxes.

* * * * *

(b) * * *

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred

compensation plans, or other similar types of plans.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 44 and 52**

[FAC 90-37; FAR Case 92-040; Item XV]

RIN 9000-AF82

**Federal Acquisition Regulation;
Contractors' Purchasing Systems
Reviews and Subcontractor Consent**

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 to amend the Federal Acquisition Regulation (FAR) to increase the dollar thresholds for the performance of Contractors' Purchasing Systems Reviews (CPSR's) and the thresholds for subcontract consent. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 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 90-37, FAR case 92-040.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed rule was published in the Federal Register at 59 FR 16393, April 6, 1994. The rule proposed to raise (1) the threshold for performing CPSR's from \$10 million to \$25 million, and (2) in the clause, Subcontracts (Cost-Reimbursement and Letter Contracts), (i) the \$10,000 threshold for notification to the contracting officer to \$25,000, and (ii) the \$10,000 threshold requiring additional information on certain subcontracts to \$25,000. After evaluation of public comments, the Councils agreed to a final rule without

change. As a result of internal review, it was determined that FAR 44.201-2(a)(1) should also be revised to reflect the higher threshold.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the threshold increase will reduce the number of contractors meeting the criteria for CPSR's and the number of small businesses requesting consent to subcontract as a result of the increased threshold will be minimal.

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 a new information collection requirement concerning 9000-0132 has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, through June 30, 1997.

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 44 and 52 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 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201-2 [Amended]

2. Section 44.201-2 is amended in paragraph (a)(1) by removing "\$10,000" and inserting "\$25,000" in its place.

44.302 [Amended]

3. Section 44.302 is amended in paragraph (a) by removing "\$10 million" each time (twice) it appears and inserting "\$25 million".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.244-2 [Amended]

4. Section 52.244-2 is amended by revising the date of the clause heading to read "(MAR 1996)"; and by removing from paragraphs (a)(4) and (b)(1)(i) "\$10,000" and inserting "\$25,000".

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