

501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–09, FAR case 96–610.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On June 22, 1998, FAR Case 96–610, Rehabilitation Act, Workers with Disabilities, was published in the **Federal Register** as an interim rule. The FAR rule implemented Department of Labor (DoL) regulations at 41 CFR 60–741 that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). The rule amended FAR Subpart 22.14 and the clauses at 52.212–5, 52.213–4, and 52.222–36 to conform to the DoL regulations. No public comments were received in response to the interim rule. The interim rule is being adopted as a final rule without change.

##### 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 implements existing Department of Labor regulations and imposes no new requirements.

##### 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 Parts 22 and 52

Government procurement.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

##### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 22 and 52, which was published at 63 FR 34073, June 22, 1998, is adopted as a final rule without change.

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

[FR Doc. 98–28959 Filed 10–29–98; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Part 31

[FAC 97–09; FAR Case 97–036; Item VI]

RIN 9000–AH95

##### Federal Acquisition Regulation; Civil Defense 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 delete the civil defense cost principle. 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:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–09, FAR case 97–036.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

A proposed rule was published in the **Federal Register** on March 20, 1998 (63 FR 13771). The proposed rule deleted the cost principle at FAR 31.205–5, Civil defense costs. With the end of the Cold War, the special guidance provided in this cost principle is no longer deemed necessary. The acceptability of this type of costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31. The proposed rule is converted to a final rule without change.

One comment was received in response to the proposed rule. This comment was 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 entities use simplified acquisition procedures or 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 change to the FAR does 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: October 22, 1998.

**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).

##### 31.205–5 [Removed and Reserved]

2. Section 31.205–5 is removed and reserved.

[FR Doc. 98–28960 Filed 10–29–98; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Part 31

[FAC 97–09; FAR Case 95–020; Item VII]

RIN 9000–AH05

##### Federal Acquisition Regulation; Costs Related to Legal/Other Proceedings

**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 allowability of costs incurred for qui tam suits in which the Government does not intervene. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-09, FAR case 95-020.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the **Federal Register** on June 20, 1996 (61 FR 31790). Seven sources submitted public comments. All comments were considered in developing the final rule.

This final rule clarifies the cost principle at FAR 31.205-47 as it relates to qui tam suits not joined in by the Government. The final rule also clarifies, at FAR 31.205-47(e)(3), that the maximum reimbursement contractors may receive for legal costs in connection with agreements reached under FAR 31.205-47(c) is 80 percent of otherwise allowable and allocable incurred costs.

Industry has commented that this coverage should be effective prospectively. After consideration of these comments, it is concluded that this coverage is properly characterized as a clarification. Nevertheless, it is recognized that certain Government contracting personnel and contractors may have had common misinterpretations of the regulatory coverage. Indeed, those inconsistencies are the catalyst behind this clarification. On August 24, 1995, the Defense Contract Audit Agency issued audit guidance that clarified audit treatment for qui tam legal fees. For qui tam legal fees incurred before August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the regulatory coverage, the contracting officer, in consultation with his or her legal

advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

**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 entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

**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: October 22, 1998.

**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 31.205-47 is amended by revising the introductory text of paragraph (b); by redesignating (c) as (c)(1) and adding (c)(2); and by revising paragraph (e)(3) to read as follows:

**31.205-47 Costs related to legal and other proceedings.**

\* \* \* \* \*

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

\* \* \* \* \*

(c) \* \* \*

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

\* \* \* \* \*

(e) \* \* \*

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

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[FR Doc. 98-28961 Filed 10-29-98; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 32 and 37**

[FAC 97-09; FAR Case 97-302; Item VIII]

RIN 9000-AI09

**Federal Acquisition Regulation; Service Contracts**

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