

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Part 31

[FAR Case 96-006]

RIN 9000-AH56

Federal Acquisition Regulation;  
Transfer of Assets Following a  
Business Combination

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement a final rule of the Cost Accounting Standards (CAS) Board regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations. 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.

**DATES:** Comments on the proposed rule should be submitted in writing to the FAR Secretariat at the address shown below on or before September 2, 1997 to be considered in the formulation of the final rule.

**ADDRESSES:** *Comments:* Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

*Internet:* E-mail comments should be addressed to: farcase.96-006@gsa.gov.

Please cite FAR case 96-006 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 96-006.

## SUPPLEMENTARY INFORMATION:

## A. Background

On February 13, 1996, the CAS Board published a final rule in the **Federal**

**Register** (61 FR 5520) amending CAS 9904.404, Capitalization of Tangible Assets, and CAS 9904.409, Depreciation of Tangible Capital Assets. These amendments provide for "no step-up, no step-down" of asset bases (values would remain the same) after a business combination using the purchase method of accounting if tangible capital assets generated depreciation or cost of money charged to Government contracts in the seller's prior accounting year. However, if these costs were not charged to Government contracts in the seller's prior accounting period, the rule allows the assets to be adjusted to their fair values.

The proposed FAR rule is consistent with the CAS Board's approach and the Government's long-standing policy that the Government be placed in no worse of a position by virtue of a change in business ownership than it would have been had the change not taken place. This policy recognizes that costs related to asset write-ups do not add value or produce additional benefits for the Government. When a contractor's assets are written up following a business combination, an inherent inequity is present if the Government is charged depreciation and cost of money more than once for the same assets, with no added value or benefit to Government contracts. Since the proposed rule's approach does not recognize that the sale of the asset took place, *i.e.*, "no step-up, no step-down," the proposed rule also does not recognize any gains or losses when assets generated depreciation or cost of money charged to Government contracts in the seller's prior accounting period.

The Councils considered, but did not adopt, a significant alternative which would have retained the current FAR cost principles' approach of following Generally Accepted Accounting Principles (GAAP), not CAS, for non-CAS covered contracts. The current cost principles, in concert with GAAP, do not recognize asset write-ups, but do require assets to be written-down if the book value of acquired assets is reduced to be consistent with the purchase price of an acquired company. The Councils believe that the "no step-up, no step-down" approach of the proposed rule is more equitable to contractors with non-CAS covered contracts than retention of the current approach. In addition, the proposed rule will avoid complications that could arise from differences in accounting between CAS covered and non-CAS covered contracts for companies that come in and out of being CAS covered.

## B. Regulatory Flexibility Act

The proposed change to FAR part 31 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 entities use the simplified acquisition procedures or are awarded on a competitive fixed-price basis, and the cost principles do not apply. In addition, this rule is limited to contractors who have undergone a business merger or combination. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR part will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96-006), 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.*

## List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 24, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, it is proposed that 48 CFR Part 31 be 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 31.205-10 is amended by revising paragraph (a)(5) to read as follows:

## 31.205-10 Cost of money.

(a) \* \* \*

(5) The requirements of 31.205-52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.

\* \* \* \* \*

3. Section 31.205-52 is revised to read as follows:

**31.205-52 Asset valuations resulting from business combinations.**

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be the amount measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization, cost of money, and depreciation shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 46 and 52**

[FAR Case 96-009]

RIN 9000-AH61

**Federal Acquisition Regulation;  
Contract Quality Requirements**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council are proposing to amend the Federal Acquisition Regulation (FAR) to reflect a preference for commercial contract quality requirements, rather than Federal or military specifications. This regulatory action is 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.

**DATES:** Comments should be submitted on or before September 2, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.96-009@gsa.gov.

Please cite FAR case 96-009 in all correspondence related to this case.

**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 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 96-009.

**SUPPLEMENTARY INFORMATION:****A. Background**

This rule proposes to amend FAR 46.202-4(b), 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards in the list of examples of higher-level contract quality requirements, and to permit solicitations to identify one or more acceptable higher-level quality requirements.

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have an 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 substitutes commercial quality standards for Government standards as examples of higher-level contract quality requirements which may be invoked, and permits the Government more flexibility in specifying higher-level contract quality requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected parts 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 96-009), 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.*

**List of Subjects in 48 CFR Parts 46 and 52**

Government procurement.

Dated: June 24, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, it is proposed that 48 CFR Parts 46 and 52 be amended as set forth below.

1. The authority citation for 48 CFR Parts 46 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 46—QUALITY ASSURANCE**

2. Section 46.202-4 is revised to read as follows:

**§ 46.202-4 Higher-level contract quality requirements.**

(a) Higher-level contract quality requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203 (b) and (c) or when the technical requirements of the contract require—

(1) Control of work operations, in-process controls, inspection, etc.; or

(2) Attention to organization, planning, work instructions, documentation control, advanced metrology, etc.

(b) If it is in the Government's interest to require that higher-level contract quality requirements be maintained, the contracting officer shall use the clause prescribed at 46.311 to require the contractor to comply with a Government-specified inspection system, quality control system, or quality program (e.g., ISO 9001, 9002, or 9003; ANSI/ASQC Q9001, Q9002, or Q9003; ANSA/ASQC E4; ANSE/ASME NQA-1, or other higher-level contract quality requirement). The contracting officer shall consult technical personnel before including either a specific, or a range of acceptable higher-level quality requirements in a contract.

3. Section 46.311 is revised to read as follows:

**§ 46.311 Higher-level contract quality requirement.**

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of either a specific, or a range of acceptable higher-level contract quality requirements is appropriate (see 46.202-4).

**PART 52—SOLICITATION PROVISIONS  
AND CONTRACT CLAUSES**

4. Section 52.246-11 is revised to read as follows: