

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).
[FR Doc. 99-24419 Filed 9-23-99; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97-14; FAR Case 98-006; Item XI]

RIN 9000-AI24

Federal Acquisition Regulation; Interest and Other Financial 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make minor changes to the cost principle concerning "interest and other financial costs."

EFFECTIVE DATE: November 23, 1999.

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 97-14, FAR case 98-006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the *Federal Register* on January 29, 1999 (64 FR 4760). The rule proposed amending FAR 31.205-20, Interest and Other Financial Costs, to add "interest charges and other amounts paid as a consequence of late contractor payments" to the list of unallowable costs. In addition, the rule proposed several minor revisions, including the deletion of "and directly associated costs." This phrase is unnecessary since FAR 31.201-6(a) indicates that when "an unallowable cost is incurred, its directly associated costs are also unallowable."

Fifteen respondents submitted public comments to the proposed rule. Many of the respondents expressed the following concerns:

- The ruling by the Court of Appeals for the Federal Circuit (*Lockheed Corporation v. Secretary of the Air Force*, 113 F.3d 1225 (Fed. Cir. 1997)) did not involve interest charges paid "as a consequence of late contractor payments," but rather as a consequence of an inadvertent tax deficiency.

- The term "late contractor payments" is overly broad and may result in confusion regarding interest allowability.

The rule is inequitable since it proposes to disallow Government reimbursement of interest costs incurred by a contractor for the underpayment of State taxes while FAR 31.201-5, Credits, requires the contractor to credit the Government the applicable portion of any State tax refunds it receives, together with interest.

- The rule incentivizes contractors to be overly conservative in computing State tax liability.

- The rule substantially increases administrative burdens on the Government and contractors.

While the Councils do not agree with all of the concerns expressed by the respondents, the Councils have decided not to add "interest charges and other amounts paid as a consequence of late contractor payments" to the list of unallowable costs in FAR 31.205-20, pending further study on the issue of interest allowability. Therefore, this final rule only makes minor changes to the interest cost principle.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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 this rule only makes nonsubstantive changes to the cost principle concerning "interest and other financial costs." In addition, 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 information collection requirements that 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: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 31 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. Revise section 31.205-20 to read as follows:

31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, and costs of preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 36, 44, 49, and 52

[FAC 97-14; FAR Case 97-043; Item XII]

RIN 9000-AI22

Federal Acquisition Regulation; Cost-Reimbursement Architect-Engineer Contracts

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide guidance

on the applicability of certain clauses to cost-reimbursement architect-engineer (A-E) contracts.

EFFECTIVE DATE: November 23, 1999.

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 Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-14, FAR case 97-043.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 63 FR 71710, December 29, 1998, with comments requested by March 1, 1999. Only one respondent submitted comments, and those comments were not substantive. This final rule is unchanged from the proposed rule. The rule amends the prescriptions for use of the following FAR clauses to include cost-reimbursement architect-engineer services contracts:

- 52.236-24 Work Oversight in Architect-Engineer Contracts
- 52.236-25 Requirements for Registration of Designers
- 52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)
- 52.249-6 Termination (Cost-Reimbursement)

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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 only corrects certain clause prescriptions, and this correction will not bring about any increased costs to be borne by the contractor.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule requires use of the clause at FAR 52.249-6, Termination (Cost-Reimbursement), in cost-reimbursement contracts for architect-engineer services. The information collection requirements relating to termination clauses are

approved and covered by OMB Control No. 9000-0028.

List of Subjects in 48 CFR Parts 36, 44, 49, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 36, 44, 49, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 36, 44, 49, 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 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.609-3 [Amended]

2. In section 36.609-3, remove "fixed-price" and add "all" in its place.

36.609-4 [Amended]

3. In section 36.609-4, remove "fixed-price".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

4. In section 44.204, amend paragraph (b) by removing the words "fixed-price".

PART 49—TERMINATION OF CONTRACTS

5. In section 49.503, revise paragraphs (a)(1) and (b) to read as follows:

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts*—(1) *General use.* Insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.

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(b) Insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. In section 52.236-25, revise the introductory text of the clause to read as follows:

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause:

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAC 97-14; FAR Case 98-002; Item XIII]

RIN 9000-A117

Federal Acquisition Regulation; Conditionally Accepted Items

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work; and that the contracting officer must document the basis for the amounts withheld in the contract file.

EFFECTIVE DATE: November 23, 1999.

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 Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-14, FAR case 98-002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on October 28, 1998, (63 FR 57878). This final rule implements the recommendation of General Accounting Office Report GAO/NSIAD-98-20 Defense Acquisition, Guidance Is Needed On Payments For Conditionally Accepted Items, dated December 12, 1997. The rule amends FAR 46.101 to add a definition of "conditional acceptance," and amends