

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 25**

[FAC 2001–24; FAR Case 2003–007; Item VII]

RIN 9000–AJ72

**Federal Acquisition Regulation; Buy
American Act—Nonavailable Articles**

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 add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality.

DATES: Effective Date: July 19, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–24, FAR case 2003–007.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 54296, September 16, 2003. The proposed rule amended FAR 25.104(a), adding certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality.

The Councils received two responses to the proposed rule. One respondent opposed the rule because she does not think that the “American public” needs or wants these items. She believes that if we do not produce these items in the United States, then we should do without them. The Councils nonconcur with this comment. The Defense Logistics Agency has provided support for the need for these items and demonstrated non-availability. The Buy American Act does not require that we

“do without” items that are domestically nonavailable.

The second respondent fully supported the proposed rule. In addition, they provided a list of additional food items that are nonavailable in the United States. Evaluation of this additional list is outside the scope of this case.

This is not a significant regulatory action and, therefore, was not subject to 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 items being added to the list are not available from domestic sources.

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 25

Government procurement.

Dated: June 10, 2004.

Ralph J. De Stefano,*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.104 in paragraph (a) by adding, in alphabetical order, the articles “Bamboo shoots,” “Goat hair canvas,” “Grapefruit sections, canned,” “Modacrylic fur ruff,” and “Water chestnuts,” to read as follows:

25.104 Nonavailable articles.

(a) * * *
* * * * *
Bamboo shoots
* * * * *
Goat hair canvas
Grapefruit sections, canned
* * * * *

Modacrylic fur ruff.

* * * * *

Water chestnuts.

* * * * *

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

[FAC 2001–24; FAR Case 2002–006; Item VIII]

RIN 9000–AJ65

**Federal Acquisition Regulation;
Application of Cost Principles and
Procedures and Accounting for
Unallowable 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 revise FAR 31.204, Application of principles and procedures, to improve clarity and structure.

DATES: *Effective Date:* July 19, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–24, FAR case 2002–006.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at (68 FR 28108) on May 22, 2003, with request for comments. The rule proposed to amend FAR 31.204, Application of principles and procedures, and FAR 31.201–6, Accounting for unallowable costs. Nine respondents submitted comments; however, no comments related to FAR 31.204. Therefore, the Councils concluded that the proposed rule should be converted to a final rule without changes.

The proposed FAR rule also included proposed revisions to FAR 31.201-6, Accounting for unallowable costs. Due to significant changes made as a result of public comments received, the Councils have decided that the proposed revisions to FAR 31.201-6 will be published as a second proposed rule in a **Federal Register** notice under new FAR case 2004-006.

This is not a significant regulatory action and, therefore, was not subject to 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. Public Comments

There were no public comments received on section 31.204.

C. 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 principles and procedures discussed in this rule. For FY 2003, only 2.4 % of all contract actions were cost contracts awarded to small business.

D. 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: June 10, 2004.

Ralph J. De Stefano,

Acting Director, 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 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.204 in the first sentence of paragraph (a) by removing “shall be allowed” and adding “are

allowable” in its place; by revising paragraph (b); and by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

31.204 Application of principles and procedures.

* * * * *

(b)(1) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with this part:

(i) Cost-reimbursement.

(ii) Fixed-price incentive.

(iii) Price redeterminable (*i.e.*, fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(2) The requirements of paragraph (b)(1) of this section apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(c) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, for which subcontract cost analysis was performed are allowable if the price was negotiated in accordance with 31.102.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001-24; FAR Case 2002-008; Item IX]

RIN 9000-AJ69

Federal Acquisition Regulation; Gains and Losses, Maintenance and Repair Costs, and Material 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) by deleting the cost principle regarding maintenance and repair costs, and revising the cost principles regarding contingencies, material costs, and training and education costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The revisions are intended to amend the FAR regarding contract cost principles and procedures in light of the evolution of generally accepted accounting principles (GAAP), the advent of acquisition reform, and experience gained from implementation of the FAR regarding contract cost principles and procedures.

DATES: *Effective Date:* July 19, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501-0650. Please cite FAC 2001-24, FAR case 2002-008.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 40466, July 7, 2003, with request for comments. Three respondents submitted comments on the proposed FAR rule. A discussion of the comments related to FAR 31.205-24 and 31.205-26 are provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with minor changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Section B, Comment 2, below.

In addition to the above, the proposed FAR rule also included proposed revisions to FAR 31.205-16, Gains and losses on disposition or impairment of depreciable property or other capital assets. Due to significant changes made as a result of public comments received, the Councils have decided that the proposed revisions to the FAR 31.205-16 cost principle will be published as a second proposed rule in a **Federal Register** notice under FAR case 2004-005.

B. Public Comments

FAR 31.205-24, Maintenance and Repair Costs

1. *Comment:* The respondent agrees that the cost principle can be removed from the FAR.

Councils' response: Concur.